

**UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES**

OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS, UNITED
STATES DEPARTMENT OF LABOR,

Plaintiff,

v.

ORACLE AMERICA, INC.,

Defendant.

OALJ Case No. 2017-OFC-00006

**PLAINTIFF'S MOTION FOR PROTECTIVE ORDER OR IN THE
ALTERNATIVE LEAVE TO AMEND THE COMPLAINT**

Pursuant to the Rules of Practice for Administrative Proceedings to Enforce Equal Opportunity Under Executive Order 11246 (OFCCP Rules), Plaintiff Office of Federal Contract Compliance Programs (OFCCP) hereby moves to for a Protective Order to prevent intimidation and coercion of members of the protected classes or, in the alternative, moves for leave to amend its complaint to allege violations of the anti-retaliation implementing regulations. *See* 41 C.F.R. §§ 60-30.8, 60-30.15, 60-1.32; 29 C.F.R. §§ 18.12, 18.52.

OFCCP and Oracle America, Inc. have met and conferred on these issues, including extensive correspondence and telephonic consultation.

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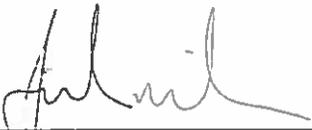
MAY 24 2019

Office of Administrative Law Judges
San Francisco, CA

DATED: May 24, 2019

Respectfully submitted,

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**UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES**

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, UNITED STATES DEPARTMENT OF LABOR,	:	
	:	
Plaintiff,	:	Case No. 2017-OFC-00006
	:	
v.	:	
	:	
ORACLE AMERICA, INC.	:	
	:	
Defendant.	:	

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF OFCCP'S
MOTION FOR PROTECTIVE ORDER OR IN THE ALTERNATIVE LEAVE TO
AMEND THE COMPLAINT**

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Office of Administrative Law Judges
San Francisco, Ca

I. INTRODUCTION

OFFCP files the instant motion to redress increasing witness intimidation by Oracle. OFCCP does not file this motion or make these allegations lightly or in pursuit of litigation advantage. To no avail, OFCCP has spent the last two weeks imploring Oracle to cease its coercive conduct by simply communicating honestly with its employees about their rights to participate in this proceeding, free of fear of reprisal. “Attempts to intimidate witnesses strike at the very heart of the integrity of the judicial process,” *In Re Somerson*, ARB Case No. 03-055, 2003 WL 22855212, at *5 (ARB Nov. 25, 2003), and hundreds of Oracle’s employees have advised OFCCP that they fear reprisal if they participate in this litigation. As a federal contractor, Oracle has a specific duty to ensure its employees are free to participate in this case and to petition their government for relief. It has come to light through recent events that the rights of Oracle’s employees’ have not been adequately protected here.

Although Oracle has discouraged and impeded its employees’ communication with OFCCP since the first days of OFCCP’s audit, Oracle sharply escalated its interference efforts on April 29, 2019, when it demanded that OFCCP immediately “halt” all communications with the protected class until Oracle gave its “consent” to and “approval” of OFFCP’s communications with the protected class. As part of that demand for cessation of all communications between the class members and OFCCP, Oracle also contended that it had an attorney-client relationship with some members of the protected class *in this litigation*. In the course of advising Oracle that it may not attempt to impede communications between the protected class and OFCCP by the express terms of the Executive Order’s implementing regulations (41 C.F.R § 60-1.32) and that Rule 1.7(d)(3) of the California Rules of Professional Conduct expressly bars Oracle’s attorneys from simultaneously representing Oracle and the protected class, OFCCP learned that Oracle had

commenced other coercive and intimidation efforts several months ago. Earlier this year, Oracle – through its attorneys – contacted members of the protected class directly, while at work, in an effort to secure interviews and declarations from these class members for use by Oracle to defeat allegations of gender discrimination – one of the key claims at issue in *in this litigation*. When Oracle’s attorneys, copying Oracle’s in-house counsel, contacted the class members, the class members were not advised, and some report that they did not understand, that these interviews with Oracle’s counsel were not mandatory. According to Oracle’s attorneys, the class members interviewed were provided some information *at the interview* that the pending state court litigation concerned gender discrimination, but class members were *not advised*: about the existence of, or the claims involved in, OFCCP’s enforcement action here; that the interests of their client, Oracle, were adverse to the interests of the class members in both this litigation and the *Jewett* state court gender discrimination action; or that class members could contact OFCCP regarding their rights and the claims being advanced here. Simply put, the class members were never told that they were being asked to provide information to Oracle for use *against their own interests*, contrary to the express requirements of the applicable Rules of Professional Conduct.

Finally, just last week, Oracle filed a motion asking this Court to use its authority to punish Oracle employees for participating in this proceeding by communicating with OFCCP. Pointing to nonexistent inaccuracies in OFCCP’s letter to the protected class inviting them to provide information relevant to this action, Oracle asked the Court in its public filing to bar testimony from any employee who has come forward to share information with OFCCP.

Oracle’s adamant refusal to cease engaging in coercive conduct—violating the express prohibition of witnesses intimidation contained in 41 C.F.R. § 60-1.32—has left OFCCP with no choice but to seek this Court’s intervention. Accordingly, OFCCP seeks a Protective Order from

this Court requiring the distribution of a fair notice to all class members, and restraining Oracle from future intimidation and coercion of workers and witnesses in this matter.

BACKGROUND

A. OFCCP Secured Information to Contact the Protected Class Regarding the Claims OFFCP Advances on their Behalf in this Litigation.

At the start of OFCCP's compliance review, OFCCP, consistent with established Departmental practice, asked Oracle to provide information for its employees covered by Oracle's AAP at Redwood Shores. Oracle refused OFFCP's request both during the compliance review and after this enforcement proceeding was filed, requiring OFCCP to move to compel this information. Declaration of Norman Garcia ("Garcia Decl."), ¶ 6. In moving to compel, OFCCP explained that it needed this information to communicate with Oracle's current and former employees for whom OFCCP seeks relief. *See* Plaintiff's Mem. P. & A ISO Mot. To Compel. (Aug. 18, 2018). Judge Larsen granted the motion, and in 2017, Oracle finally produced contact information for its employees before the case was stayed. Garcia Decl. ¶ 6. *Id.* Since the resumption of this litigation in 2019, however, Oracle has refused to provide any updated contact information. Garcia Decl. ¶ 6.

B. OFFCP Advised Oracle In Advance of Its Communications with the Class.

Using the contact information that Oracle was compelled to produce, OFCCP sent a letter inviting the protected class to contact OFCCP to share their experiences or ask questions. *See* Declaration of Jeremiah Miller ("Miller Decl."), Exhibit B.

Before sending the letter, on March 14, 2019, counsel for OFCCP reached out to counsel for Oracle to make it clear that as part of its outreach, OFCCP would be speaking to current managers, as the protected class includes both managerial and non-managerial employees.

Miller Decl., ¶ 3, Ex. A. Counsel for OFCCP sought and obtained agreement from Oracle that these contacts were permitted, provided that OFCCP did not seek to use statements by Oracle's current managers as admissions of a party-opponent in this matter. *Id.*

C. A Month After OFCCP Invited Class Members to Share Information, Oracle Demanded the Cessation of Communications Between OFCCP and the Protected Class.

More than a month after OFCCP sent its letter to the class, Oracle contacted OFCCP and demanded that OFCCP “halt all ongoing communications” with the protected class. Declaration of Abigail Daquiz (“Daquiz Decl.”), Ex. 1 (Letter from Ms. Connell to Mr. Miller dated April 29, 2019).² Oracle demanded that OFCCP produce all communications between OFCCP and members of the protected class, asserting that Oracle must consent to communications between OFCCP and protected class members. *Id.* On May 17, 2019, Oracle moved this Court to exclude all testimony from workers who contacted OFFCP upon learning of this litigation from OFCCP's letter to the protected class. Oracle's Motion to Correct Misleading Communications at 2.

D. Oracle's Counsel Directly Contacted Members of the Protected Class to Secure Interviews and Statements in Support of Oracle's Defense.

Recently, OFCCP learned that in approximately February 2019, Oracle's attorneys began directly contacting employees to arrange interviews. Orrick sent emails to members of the protected class, copied to “Emily Sullivan, Managing Counsel in Oracle's in-house legal department,” requesting a time for an interview. *See* Figure 1; Garcia Decl., Ex. A.

² See Declaration of Abigail Daquiz and attached exhibits filed on May 17, 2019 in support of OFCCP's Opposition to Oracle's Second Motion to Compel.

Subject: Jewett v. Oracle

Date: [REDACTED]

From: Smith, David B. <dsmith@orrick.com>

To: [REDACTED]

CC: Emily Sullivan <emily.sullivan@oracle.com>

Dear [REDACTED]

I am an attorney with the law firm of Orrick, Herrington & Sutcliffe LLP, which represents Oracle in its defense of an ongoing lawsuit against the company (*Jewett v. Oracle*). In order to gather information relevant to the case, we would like to speak with a number of ICs, including you. You have not been singled out in any way, but we believe you may have relevant information to share.

We would like to schedule a time to speak with you over the next week – you do not need to do anything to prepare for the call. Will you please provide me with some times when you are available for an hour-long call? I can provide more background about the case on the call.

I have copied Emily Sullivan, Managing Counsel in Oracle's in-house legal department, in the event you have any questions about this outreach or the interview we'd like to conduct.

Thanks in advance for your time – we greatly appreciate it.

David Smith

David B. Smith
ORRICK, HERRINGTON & SUTCLIFFE LLP

Figure 1. Orrick email to members of the protected class.

OFCCP received information from Oracle employees that they did not feel that such interviews were voluntary. Garcia Decl. ¶ 4.⁵ Following their emails, Oracle's attorneys interviewed employees and obtained declarations taken under penalty of perjury from female employees across California, including employees at Redwood Shores who are members of the protected class in this case. Declaration of Laura Bremer ("Bremer Decl."), ¶ 12, Exhibit 9 (Declaration of Ashlee Kling, Barbara Lindhild, and Julie Min Yang Doyle). OFFCP has requested, but Oracle has not disclosed, the exact number of interviews conducted or the number

⁵ OFFCP has requested that Oracle disclose the extent and scope of its counsel's communications with the protected class, but Oracle has not provided any information beyond that which OFCCP was able to uncover in the filings from the state court litigation. Bremer Decl. at ¶ 6.

of declarations obtained. *Id.* The sworn declarations Orrick secured discuss each employee’s job duties,⁶ and at least one provides testimony that the female class members do not “feel disadvantaged as a woman at Oracle.” *Id.* (Declaration of Myrna Guerrero).

In correspondence with *Jewett* counsel, Kathryn Mantoan, who represents Oracle in both cases, stated that certain oral disclosures were made at the commencement of these interviews. Daquiz Decl. Ex. 5. The verbal disclosures provided once the interview had begun did not: contain information about the existence of, or claims involved in *this litigation*; notify employees of their right to consult with OFCCP about their claims; disclose that the employees could be awarded back pay or pay adjustments if OFCCP prevails in this action or the *Jewett* plaintiffs prevail in their class action; or disclose that Oracle’s interests in both of these actions are adverse to those of the protected classes in these lawsuits. *Id.*

E. OFCCP Has Received Strong Reports by Class Members Reflecting Discouragement to Participate in this Proceeding.

In response to OFCCP’s invitation to the protected class to share their experiences with OFCCP, informants have repeatedly expressed that they fear retaliation by Oracle if their cooperation with the government is discovered. *See* Declaration of Ana Hermsillo in Support of OFCCP’s Opposition to Oracle’s Second Motion to Compel (“Hermsillo Decl.”) at ¶ 2. Workers report fear of blacklisting by Oracle, and frequently request assurances that Oracle will not be notified of their participation in this matter. *Id.* ¶¶ 5-6. Members of the protected class have reported that Oracle has punished employees for raising issues related to their compensation, including direct instructions to stop asking questions, giving employees negative

⁶ The declarations’ discussion of job duties presumably are offered in support of Oracle’s attack on the “commonality” of the class claims and the plaintiff’s statistical methods in *Jewett*’s pending class action.

performance reviews, reprimanding employees, and even termination of employees who complain of discriminatory practices. *Id.* ¶¶ 9-12.

F. Oracle Would Not Agree to A Corrective Notice.

When OFCCP received Oracle’s demand that it cease communicating with the protected class, OFCCP immediately responded that the demand, along with Oracle’s claims of representation of the protected class, constituted impermissible interference under 41 C.F.R. § 60-1.32 and that its claims of representation ran afoul of Rule 1.7(d)(3) of the California Rule of Professional Conduct (“RPC”). Bremer Decl. ¶ 4; Daquiz Decl., Ex. 2. OFCCP asked Oracle for assurances that it would cease engaging in coercive conduct. Bremer Decl., ¶ 6. Shortly thereafter, OFCCP learned of the effort by Oracle counsel to secure interviews and declarations from class members earlier in the year. *Id.* ¶ 8. OFCCP immediately advised Oracle that this conduct also violated the Executive Order and RPC 1.13(f). *Id.*; Daquiz Decl. Ex. 4. OFCCP asked Oracle to agree to send a corrective notice to the class, communicating Oracle’s adverse interests, the fact that Oracle attorneys do *not* represent the protected class, and that all employees may participate in this proceeding free of fear of reprisal. *Id.* ¶ 10; Ex. J.

OFCCP and Oracle were still meeting and conferring regarding a corrective notice when Oracle filed its Motion to Correct Misleading Communications. Bremer Decl., ¶ 9. OFCCP proposed the parties send a joint notice which provided the information Oracle claimed it wanted OFCCP to communicate,¹¹ along with the disclosures OFFCP sought regarding Oracle’s adverse interests and inability to jointly represent Oracle and the protected class. Bremer Decl. at ¶¶ 11, 13.

¹¹ It remains OFCCP’s position that its outreach letter is accurate and clear and that a “corrective notice” is unnecessary.

Oracle rejected OFCCP's proposed notice, advising OFFCP that: (1) that Oracle would not join the notice, (2) no corrections were necessary to address Oracle's failure to inform members of the protected classes that their interests were adverse, (3) only the limited set of members of the protected class for whom OFCCP had contact information would get the notice, and (4) that Oracle would not advise the protected class that its counsel did not represent them. Bremer Decl. at ¶ 13.

II. ARGUMENT

A. Oracle's Conduct Violates the Executive Order's Prohibition on Employee/Witness Intimidation and Retaliation.

i. *Employees Must Be Protected From Coercion to Preserve Integrity of Judicial System.*

Our system of justice depends on the ability of witnesses to freely provide truthful testimony without fear of intimidation or retaliation.¹² In the context of an OFCCP case, the Executive Order regulations expressly provide that federal contractors "shall not harass, intimidate, threaten, coerce, or discriminate against any individual because the individual has . . . or may . . . [a]ssist[] or participat[e] in *any manner* in an investigation, compliance evaluation, hearing, or any other activity related to the administration of the Order or *any other Federal, state or local law requiring equal opportunity.*" 41 C.F.R. 60-1.32(a)(2) (emphasis added).

In cases such as this in which the government seeks to advance the legal rights of employees *vis a vis* their employers, the need to protect employee-witnesses from intimidation is

¹² "A party's threatening or harassing witnesses . . . is a basic trespass upon the integrity of the judicial process. Interference with witnesses testifying before a Federal agency is a very serious matter, as has been explicitly recognized by the Secretary." *Somerson v. Mail Contractors of America, Inc.*, 2002-STA-44 (ALJ Dec. 16, 2002), *aff'd* ARB Case No. 03-055, 2003 WL 22855212, at *4 (ARB Nov. 25, 2003); *see also* 18 U.S.C. §§ 1505, 1512(b) (criminalizing witness intimidation in investigations and proceedings, including proceedings before the Office of Administrative Law Judges).

especially critical. The unfortunate reality, however, is that employees, without proper information about their rights and assurances against retaliation, will feel coerced not to participate in these matters for fear that they may face reprisal. *See, e.g., Camp v. Alexander*, 300 F.R.D. 617, 624 (N.D. Cal. 2014) (“The caselaw nearly universally observes that employer-employee contact is particularly prone to coercion[.]”); *Bublitz v. E.I. duPont de Nemours & Co.*, 196 F.R.D. 545, 548 (S.D. Iowa 2000) (risk of coercion “particularly high” due to inherent nature of employment relationship).¹³ Courts have repeatedly recognized that, to preserve the integrity of judicial proceedings, care must be taken to ensure that employers do not intimidate or coerce employees not to participate as witnesses in legal proceedings against the employer. *See Bublitz*, 196 F.R.D. at 548 (collecting cases); *see also Acosta v. Sw. Fuel Mgmt., Inc.*, 2018 WL 2207997, at *2 (C.D. Cal. Feb. 20, 2018) (same).

ii. OFCCP represents the interests of Oracle employees who have been victims of discrimination.

In this action to enforce the Executive Order’s prohibition on discrimination by government contractors, OFCCP seeks to advance the public interest, *and* obtain relief on behalf of individual employees who have been victims of discrimination. *See Gen. Tel. Co. of the Nw. v. EEOC*, 446 U.S. 318, 326 (1980) (noting the government can enforce an important public interest while also acting “at the behest of and for the benefit of specific individuals”). The Executive Order and its enabling regulations give OFCCP sole enforcement authority to seek

¹³ *See also, e.g., Wang v. Chinese Daily News, Inc.*, 236 F.R.D. 485, 490 (C.D. Cal. 2006), *judgment vacated on other grounds by Chinese Daily News, Inc. v. Wang*, 565 U.S. 801 (2011) (“Unsupervised communications urging individuals to [waive their right to collect wages due], by their very nature, are likely to produce distorted statements on the one hand and the coercion of individuals on the other. This is especially true when the parties are engaged in an ongoing employer-employee relationship.”) (*citing Kleiner v. First Nat’l Bank of Atlanta*, 751 F.2d 1193, 1206 (11th Cir. 1985)).

redress for violations of the Executive Order: there is no private right of action. EO 11246; *see Utley v. Varian Assocs., Inc.*, 811 F.2d 1279, 1286 (9th Cir. 1987) (finding no private right of action under the Executive Order). The Executive Order provides for the enforcement of contractors' non-discrimination obligations through government suits that ultimately vindicate private rights or interests. The government cannot achieve the purpose of the Executive Order unless individuals who have been harmed by contractors' discriminatory conduct have the same opportunity to engage in confidential communications with government attorneys litigating the case as they would with private counsel.

OFCCP enforcement actions are not unique in this respect. Courts widely recognize the alignment of interests between the government, enforcing a public interest, and private parties whose harm will be redressed by the enforcement of the public interest. *See Perez v. Clearwater Paper Corp.*, 2015 WL 685331, at *2 (D. Idaho Feb. 17, 2015) (acknowledging the existence of a privileged relationship between the Secretary and a complainant under anti-retaliation provisions of the Occupational Safety and Health Act where no private right of action exists); *EEOC v. Int'l Profit Assocs., Inc.*, 206 F.R.D. 215, 218-19 (N.D. Ill. 2002) (extending the attorney-client privilege between EEOC and class members in a Title VII discrimination case despite the lack of formal representation); *Donovan v. Teamsters Union Local 25*, 103 F.R.D. 550, 552-53 (D. Mass. 1984) (communications between Department of Labor attorney and individual on whose behalf the Department brought suit protected by attorney-client privilege); *U.S. ex rel. Purcell v. MWI Corp.*, 209 F.R.D. 21, 26-27 (D.C. Cir. 2002) (finding a privileged relationship between a relator and the Government in a False Claims Act case is a "logical and natural extension of the work-product doctrine, much like the joint-defense privilege").

Here, the individuals injured by Oracle’s violations of the Executive Order (members of the protected classes) and OFCCP, the governmental agency charged with enforcing the Executive Order, clearly share a common interest in seeing those injuries redressed. *See, e.g., E.E.O.C. v. Gumbaytay*, 276 F.R.D. 671, 674 (M.D. Ala. 2011) (applying common interest doctrine to protect communications between non-party victims and the government). Contrary to Oracle’s repeated claims, this common interest privilege arises regardless of whether the party with whom the government has a common interest is represented by private counsel. *See, e.g., Bauman v. Jacobs Suchard, Inc.*, 136 F.R.D. 460, 462 (N.D. Ill. 1990) (holding that “[c]ommunications between the EEOC attorneys and the employees” themselves in ADEA action were privileged).

It must be emphasized that much of Oracle’s interference with communications between the protected class and OFCCP appears to arise from its confusion or unwillingness to accept the decidedly non-controversial fact that OFCCP in this action represents the interests of the protected class. As with nearly all of the Department’s worker protection enforcement actions, the Solicitor’s office directly represents OFCCP, but indirectly *through the common interest privilege* represents workers whose rights are being vindicated by the enforcement action. In actions brought to enforce federal worker protection statutes and orders, such as the Executive Order’s protection of workers’ rights to be free from gender and race discrimination by federal contractors, the interests of OFCCP and the protected class are perfectly aligned, resulting in the

common interest privilege protecting the confidentiality of communications between the protected class and OFFCP and the Solicitor's office.¹⁴

Oracle seems equally confused by the coercive impact and ethical consequences of its refusal to recognize that its interests are **directly adverse** to those of the protected class. In this litigation, Oracle denies OFCCP's allegations and findings, which means it is in Oracle's interest to *deny* claims that back wages or pay adjustments are due to the protected class. In such circumstances, RPC 1.7(d)(3) prohibits an attorney from simultaneously representing parties with such opposed interests *in the same litigation*. In a similar vein, RPC 1.13(f), combined with the requirements of RPC 1.7, requires corporate counsel to explain in writing the identity and adversity of a lawyer's client "whenever the lawyers know, or reasonably should know, that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing." *See also Mevorah v. Wells Fargo Home Mortg, Inc.*, No. C05-1175MHP, 2005 WL 4813532 at *4 (N.D. Cal. Nov. 17, 2005) (finding that defendant failed to disclose "to the [putative class] it contacted that 'the organization's interests are or may become adverse to those of the constituent(s) with whom the member is dealing.'").

¹⁴ In sharp contrast, the interests of Oracle and the interests of the protected class are fully adverse. Oracle denies OFFCP's claims, necessarily meaning that it denies that any wages or pay adjustments are due to the protected class. After OFCCP identified Oracle's ethically unsupportable claims of representing simultaneously Oracle and the protected class in this litigation, Oracle tried to cabin its representational claims to only Oracle's managers, contending that Oracle sets policy through its managers. However, as this Court likely well knows, it is hardly unusual for the Department to bring OSHA whistleblower claims on behalf of an employer's safety lead or supervisor. *See, e.g., Perez v. U.S. Postal Serv.*, 76 F. Supp. 3d 1168, 1173 (W.D. Wash. 2015). Managers' inclusion in any protected class of victims in the Department's enforcement action does not alter the ethical responsibilities of the employer's counsel. No California attorney may claim to represent two parties with opposing interests in the same litigation, Cal. R. Prof. Conduct 1.7(d)(3), which is completely consistent with the practical and common sense understanding that Oracle's attorneys cannot simultaneously represent Oracle and any member of the protected class who seeks to recover wages for unlawful discrimination by Oracle. Given this direct conflict of interest, Oracle's attorneys must abandon their ethically prohibited claim of jointly representing Oracle and the protected class.

OFCCP cites these clear RPC mandates not to ask this Court to cite or sanction Oracle counsel for violation of its professional obligations, but to underline the coercive effect of Oracle counsel's assertion of joint representation of both Oracle and the protected class, and the failure to disclose Oracle's clearly adverse interests when attempting to elicit information and sworn testimony from class members which is contrary to these class members' own interests. The guiding force of these rules of professional conduct are to ensure that attorneys do not use the power of their position to coerce adverse parties to relinquish legal rights. This coercion of testimony from the protected class and the ongoing coercive effect and interference Oracle's unsupportable claim of "representation" of the protected class poses for the class' communication with OFFCP and this Court violates the Executive Order.

iii. Oracle has Intimidated, Impeded, and Interfered with its Employees' Free and Full Participation in this Proceeding.

Oracle has engaged in three types of conduct that have interfered with employees' right to participate in this proceeding in violation of 41 C.F.R § 60-1.32.

First, as described above, Oracle through its counsel systematically contacted female members of the protected class, demanded their participation in interviews with Oracle's attorneys, secured sworn declarations under penalty of perjury from several class members to be used in Oracle's defense, all while failing to provide employees the information needed to make a free and informed decision about whether to participate. *Supra* Part II.

In cases with similar facts, courts have repeatedly recognized that these types of involuntary interviews with employees are coercive, intimidating, and likely to deter employees from exercising their right to participate in legal actions against their employer. In *Acosta v. Southwest Fuel Management, Inc. et al.*, a case alleging violations of federal overtime law, the

employers and their counsel arranged meetings with current employees to gather declarations for the employers' defense, without specifically advising the employees that the interviews were voluntary. No. CV 16-4547 FMO (AGRx), 2018 WL 739425, at *4 & n.3, *6 (C.D. Cal. Feb. 2, 2018), *vacated in part on other grounds*, 2018 WL 2207997 (C.D. Cal. Feb. 20, 2018). Although defense counsel provided "consent forms" to the employees, they failed to specify that the government sought back wages on their behalf or that speaking to the attorneys might adversely affect their ability to recover those wages. *Id.* at *5. The attorneys also asked the employees to sign declarations under penalty of perjury stating that they received all the wages due to them. *Id.* Noting that each of these factors was sufficient to establish coercion on its own, the court found that the interviews were inherently coercive and reasonably likely to deter employees from engaging in protected activity. *Id.* at *4 & n.3, *5.

Similarly, in *Acosta v. Austin Elec. Servs. LLC*, an employer and its counsel conducted interviews and obtained declarations from employees, on work hours, at the workplace, without notifying them that the meetings were voluntary, that the government had determined they may be owed back wages, or that their statements might adversely affect their right to that compensation. 322 F. Supp. 3d 951, 956-57, 959, 961-62 (D. Ariz. 2018). The attorney also asked the workers to sign a statement under penalty of perjury claiming that the employees had been paid for all hours worked. *Id.* at 956. Again, the court found defendants' conduct unlawful interviews because the interviews were coercive and likely to discourage employees from participating in the government's litigation. *Id.* at 961-62.

As with the defendants' conduct in the cases described above, Oracle's counsels' communications with members of the protected class were inherently coercive and have "had a chilling effect on participation in [this] action." *Wright v. Adventures Rolling Cross Country*,

Inc., 2012 WL 2239797, at *5 (N.D. Cal. June 15, 2012). The coercive nature of Oracle’s interviews is apparent from the fact that Oracle’s attorneys failed to specifically advise the employees that the interviews were voluntary when they contacted the employee to arrange the interview. Almost any employee receiving a request from their employer’s attorney in this context, on work hours, at the employee’s work email, with in-house counsel copied, would have felt obliged to comply. *See Southwest Fuel Mgmt.*, 2018 WL 739425, at *4 n.3, *6 (noting that employer-employee contacts are particularly prone to coercion and “can transform suggestions, requests, or observations into directives or threats”) (internal citations omitted). Indeed, employees have reported to OFCCP that they believed participation was mandatory. *Supra* Part II. Although Oracle’s attorneys claim to have provided verbal disclosures that the interviews were voluntary—those disclosures were not provided *until after the interview was arranged and had begun*. By that point, it would be very difficult for any employee, having already agreed to and commenced the interview with the employer’s attorney, to refuse to continue.

Additionally, Oracle and its attorneys failed to disclose key information that was necessary for employees to make a free and informed decision about whether to participate in the interviews. *See supra* Part II. Like the defendants in the above cases, Oracle’s attorneys failed to disclose to female employees that a government agency alleged they had been subjected to discrimination, that if OFCCP (or the *Jewett* plaintiffs) prevailed they would be entitled to pay adjustments and back pay, and that the information they provided could adversely affect their ability to recover that compensation. *See supra* Part II. In particular, Oracle’s attorneys did not disclose that the information employees provided about their jobs—which may have seemed innocuous—could be used by Oracle to argue that they had not been subjected to discrimination (namely, by supporting Oracle’s challenges to the statistical evidence of discrimination). *See*,

e.g., Oracle Opp. to Mot. For Leave to Amend (Feb. 5, 2019), at 5-6. Without an understanding of this case or the opportunity to discuss the matter with OFCCP, Oracle's employees had little chance of understanding the full consequences of assisting Oracle's counsel. *See, e.g. Sjoblom v. Charter Commc'ns, LLC*, 2007 WL 5314916, *3-4 (W.D. Wis. Dec. 26, 2007) (sanctioning employer for obtaining affidavits from potential class members after providing a consent form that described the litigation but failed to "notify them that they might be entitled to become a part of the lawsuit"); *Mevorah*, 2005 WL 4813532, at *1, *3 (restricting defense counsel's communications with potential class members because defense counsel solicited declarations without notifying the individuals that the information could be used in a manner adverse to their interests).

Second, as described above, Oracle demanded, just weeks ago, that OFCCP halt its communications with the protected class allegedly because Oracle did not "consent" to the communications. Daquiz Decl., Ex. 1. Oracle attempted to claim *its attorneys* represented the interests of the protected class seeking relief *against Oracle* for unlawful pay discrimination. Of course, OFCCP has not agreed to either Oracle's unlawful demand to cease communications with the protected class or Oracle's "representation" of the adverse protected class in this action. Nevertheless, the fact that Oracle has made this demand, including reiterating it in its publicly filed Second Motion to Compel and again in the Motion to Correct Misleading Communications filed last Friday, makes plain that it is doing everything in its power to confuse, intimidate and convince its employees that there is something improper about communicating with the government. Oracle's demand that OFCCP stop talking to the class cannot be squared with the E.O. regulation's prohibition on impeding communications with the government.

Finally, Oracle’s Motion to Correct Misleading Communications asks the Court to exclude testimony from employee-witnesses who have communicated with OFCCP. Oracle’s motion is a direct effort to prevent employees from participating in this proceeding. Oracle’s motion is frivolous, as OFCCP’s communications with the protected class have been accurate, clear and free of misrepresentation.

B. A Protective Order is Required to Redress Oracle’s Discouragement and Intimidation of Witnesses.

This Court has “all powers necessary” to conduct a fair hearing, which includes the authority to issue relief that will ensure that employees are fully informed of their rights and that the mandates of the Executive Order’s anti-intimidation provisions are not violated. *See* 41 C.F.R. 60-30.15 (mandating that the court “conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order” and granting the Court “all powers necessary” to that end); *see also Uniroyal, Inc. v. Marshall*, 482 F. Supp. 364, 373 & n. 21 (D.D.C. 1979) (recognizing that 41 C.F.R. 60-30.15 vests ALJs with broad powers to ensure fairness of its proceedings).¹⁵

Here, OFCCP hopes that the impact of the actions Oracle has taken to intimidate, discourage and outright demand the cessation of communication between the protected class and OFCCP can be remedied by a clear notice to the protected class of their rights and protection to participate in this action without fear of interference or retaliation by Oracle. This notice can also prevent, and inoculate against, future coercion against the protected class by arming the

¹⁵ Additionally, 29 C.F.R. § 18.12 provides this Court with “all powers necessary to conduct fair and impartial proceedings,” including the power to “[r]egulate the course of proceedings in accordance with applicable statute, regulation or executive order,” and any appropriate action authorized by the FRCP. 29 C.F.R. § 18.12(b)(1), (10). Further, § 18.52 allows the court, for good cause, to protect a party or person from oppression. 29 C.F.R. § 18.52.

protected class with written notice of Oracle's conflicting interests *in this litigation*. As the Solicitor's office has repeatedly explained to Oracle's counsel, when Oracle contacts members of the protected class and attempts to secure declarations supporting Oracle's claims, these class members need to be advised that this interest is **adverse** to those class members' interest *in this litigation* in recovering back wages and pay adjustments necessary to redress gender and race discrimination at Oracle. Oracle also needs to end the confusion and admit that its attorneys cannot and do represent the protected class in this action.

OFFCP ask the Court to order the distribution of the notice below, attached hereto as Attachment A, which tracks precisely the notice that OFCCP offered to issue jointly issue with Oracle. Because Oracle continues to refuse to provide OFCCP with contact information for much of the protected class – OFCCP asks the Court to either order Oracle to provide OFCCP with the contact information for the full protected class so that OFCCP can send the notice itself or order Oracle to issue the notice to all current employees within the protected class.

To guard against coercive interviews between now and trial, OFCCP asks the Court to instruct Oracle to provide this notice to any current employee it intends to interview at least 24 hours prior to any interview so that the employee can be assured that their participation is voluntary and that if they have any concerns about their interests being vindicated, they can contact OFCCP for information and assistance about their rights.

OFCCP's interests are chiefly in having this interference problem settled so that the parties can focus on finalizing their evidence and argument for hearing. However, given the great number of reports from informers of retaliatory practices by Oracle and the fact that Oracle has refused to provide OFCCP with any information about its contacts with the protected class, OFCCP asks the Court to order Oracle to disclose immediately the name and contact information

of any class members it contacted, the dates of those contacts, and a summary of the nature of the contact or interview with each member. Based on that information, OFCCP can assess whether any interference rises to a level that would not be addressed by the Court's curative notice, and thus could, if necessary, move this Court for additional relief or leave to amend the complaint to allege violations of 41 C.F.R. § 60-1.32 and secure appropriate relief.

C. In the Alternative, the Court Should Grant OFFCP Leave to Amend.

If the Court does not grant the relief requested in this motion, OFCCP seeks leave to amend the complaint to add an allegation that Oracle has violated the Executive Order and its implementing regulations at 41 C.F.R. § 60-1.62 through the conduct described above.

OFCCP's motion easily meets the applicable standards. Under the regulations applicable to these proceedings and the Federal Rules of Civil Procedure, leave to amend should be granted liberally, unless the amendment (1) would cause the opposing party undue prejudice, (2) is sought in bad faith, (3) would be futile, or (4) has been unduly delayed. *See JBS USA*, Case No. 2017-OFC-00002 (ALJ Apr. 23, 2018), at 2 (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)); *see also Eminence Capitol, LLC v. Aspeon*, 316 F.3d 1048, 1052 (9th Cir. 2003). Amendments based on "any transaction, occurrence, or event that happened after the date of the pleading to be supplemented" are proper. *See Fed. R. Civ. P. 15(d)*; *see also Eid v. Alaska Airlines, Inc.*, 621 F.3d 858, 874 (9th Cir. 2010) ("Rule 15(d) provides a mechanism for parties to file additional causes of action based on facts that didn't exist when the original complaint was filed.")

Here, OFCCP has only learned in the last two weeks that Oracle has been engaged in conduct that directly violates the Executive Order's regulations' prohibition on intimidating and coercing witnesses, as described above. *See* 41 C.F.R. § 60-1.32. Over that period, OFCCP has made every effort to resolve this dispute by negotiations with Oracle, including attempts to reach agreement on notices addressing both parties' concerns. *See generally* Bremer Decl.

As those efforts have failed, if the Court does not grant relief necessary to redress these violations, OFCCP seeks leave to amend the Complaint to add allegations consistent with the facts described in this motion – and to conduct additional discovery in support of those allegations. This amendment would be proper and necessary to redress Oracle’s violation of the Executive Order. Oracle has no grounds to resist this amendment; it is wholly necessitated by Oracle’s own unlawful intimidation, and its refusal to provide full information regarding its conduct, despite OFCCP’s repeated requests. Thus, any claims of prejudice should be rejected.

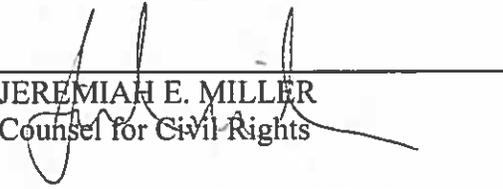
III. CONCLUSION

For the reasons enunciated above, OFCCP asks the Court to grant all appropriate relief.

DATED:  April 24, 2019

KATE S. O’SANNLAIN
Solicitor of Labor

JANET M. HEROLD
Regional Solicitor


JEREMIAH E. MILLER
Counsel for Civil Rights

OFFICE OF THE SOLICITOR
U.S. DEPARTMENT OF LABOR
Attorneys for OFCCP

ATTACHMENT A

U.S. Department of Labor

Office of the Solicitor
300 Fifth Ave., Suite 1120
Seattle, Washington 98104-2397
(206) 757-6762
FAX (206) 757-6761



Employee Name
House and Street
City State Zip

May __, 2019

Dear _____

You may have received recent correspondence sent by my office on behalf of the U.S. Department of Labor on April 4, 2019. As a follow up to that correspondence, we are writing to you about the lawsuit that the U.S. Department of Labor's Office of Federal Contract Compliance Programs ("OFCCP") brought and is pending against Oracle: *OFCCP, U.S. Dept. of Labor v. Oracle America, Inc.*, OALJ Case No. 2017-OFC-00006. In the lawsuit, OFCCP alleges that since 2013, Oracle engaged in compensation discrimination against Asian, Black, and female employees in the Product Development, Support, and Information Technology job functions at Oracle's Redwood Shores headquarters. Oracle denies these allegations.

The case is scheduled to go to hearing before an administrative law judge in December 2019. OFCCP seeks relief for current and former female, Black, and Asian Oracle employees, including managers, in the Product Development, Support, and Information Technology job functions. As a remedy, OFCCP seeks to recover back wages it claims were lost as a result of the alleged discrimination. OFCCP also seeks changes to Oracle's compensation practices going forward, including adjustments in pay rates in the event it proves the existence of gender and/or race discrimination reflected in pay rates. If OFCCP wins its lawsuit and money is awarded to former and current Oracle employees, you will be notified at that time, regardless of whether you respond to this correspondence.

Oracle and its attorneys do not represent you in OFCCP's lawsuit against Oracle seeking relief for current and former female, Black, and Asian Oracle employees (including managers) for compensation discrimination. Oracle and its attorneys represent Oracle in the lawsuit brought by OFCCP. Any information you provide to Oracle might be shared with and used by Oracle for the purpose of defending Oracle against OFCCP's lawsuit, and eliminating or reducing any relief that may be granted to former and current Oracle employees. If Oracle or its attorneys contact you to ask questions in connection with this lawsuit, you are not required to talk to them, although you are free to do so. It is up to you whether you provide information to Oracle or its attorneys, and there will be no negative consequences to you if you do not agree to any request for an interview or request for information by Oracle concerning these claims of alleged gender and race pay discrimination.

If you received recent correspondence sent by my office on behalf of the U.S. Department of Labor regarding this lawsuit, you are not required to respond to that correspondence in order to recover any money in this case. You are not required to respond to that correspondence at all, and are not required to talk to OFCCP or any attorneys from the U.S. Department of Labor, although you are free to provide information to OFCCP and its attorneys that relates to this lawsuit if you choose to do so. You may agree to participate in the lawsuit on behalf of OFCCP, including testifying at the hearing later this year, without negative consequences from Oracle. Federal law prohibits any federal contractor from discouraging, intimidating, or preventing any employee from providing information to the government, including providing testimony to the administrative law judge.

If you have any questions about the lawsuit or wish to provide information to OFCCP, you may contact the Department of Labor's Oracle witness line at (213) 894-1591. You may also contact the Department of Labor's

May 24, 2019

Page 2

witness line if you believe Oracle treated you negatively after you provided information to OFCCP or asserted your rights under Labor laws. If no one picks up, please leave your contact information and one of OFCCP's attorneys will return your call. You may also send an email to OFCCP's attorneys at OFCCPvOracleLitigation@dol.gov. Your communications with OFCCP will be treated confidentially. Documents and orders in the lawsuit are also available at the website [https://www.oalj.dol.gov/FOIA Frequently Requested Records.htm](https://www.oalj.dol.gov/FOIA_Frequently_Requested_Records.htm), under the caption OFCCP v. Oracle America, Inc., 2017-OFC-00006..

Sincerely,

Jeremiah Miller
Counsel for Civil Rights
Office of the Solicitor
Department of Labor

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS, UNITED
STATES DEPARTMENT OF LABOR,

Plaintiff,

v.

ORACLE AMERICA, INC.

Defendant.

Case No. 2017-OFC-00006

RECEIVED

MAY 24 2019

Office of Administrative Law Judges
San Francisco, Ca

**DECLARATION OF LAURA C. BREMER IN SUPPORT OF OFCCP'S MOTION FOR
PROTECTIVE ORDER AND ALTERNATIVE MOTION FOR LEAVE TO AMEND**

I, Laura C. Bremer, state and declare as follows:

1. I am a Senior Trial Attorney for the U.S. Department of Labor, Office of the Solicitor, and counsel of record for Plaintiff in this action. I submit this declaration in support of OFCCP's Motion for Protective Order and Alternative Motion for Leave to Amend the Complaint. I have personal knowledge of the matter set forth in this declaration, and I could and would competently testify thereto if called upon to do so.

2. On October 11, 2017, Oracle produced contact information for former and current Oracle employees who were members of the classes in this enforcement action, after Judge Larsen Oracle to produce this information. Using this contact information, in or around early April 2019, OFCCP sent a form letter to members of the protected classes for whom it had contact information, notifying them of this case and inviting them to contact OFCCP to share

their experiences or ask questions. A true and correct copy of the form letter OFCCP sent to some of the members of the protected classes in this case is attached hereto as Exhibit 8.

3. Upon obtaining a copy of this letter, Oracle demanded that OFCCP “halt communications with current and former employees until a corrective notice – approved by Oracle—is sent.” Suggesting that Oracle represented some members of the protected classes for whom OFCCP seeks relief and that OFCCP needed Oracle’s consent to talk to them, Oracle also claimed it “rescinds its prior consent that OFCCP contact current Oracle managers.” A true and correct copy of the April 29, 2019 letter Erin Connell sent to me via email is attached as Ex. 1 to Declaration of Abigail Daquiz in Support of OFCCP’s Opp’n to Motion to Compel Informers, filed May 17, 2019 (“Daquiz Decl.”).

4. Concerned the Oracle’s attorneys seemed to be claiming it represented members of the protected class whose interests are adverse to Oracle’s interests in the enforcement action, OFCCP raised these concerns in a letter I sent to Erin Connell on April 30, 2019. My letter also responded to Oracle’s objections to the form letter OFCCP had sent to some members of the protected class. A true and correct copy of my April 30, 2019 letter is attached as Exhibit 2 to Daquiz Decl.

5. Email discussions between Erin Connell and me between April 30 and May 2, 2019, resulting in an agreement to meet telephonically on May 9, 2019, are attached as Exhibit E to Erin Connell’s declaration in support of Oracle’s reply to motion to compel, filed May 23, 2019 (“Connell Decl.”).

6. During my meet and confer conversation with Erin Connell on May 9, 2019, I requested assurances from Erin Connell about her firm’s and Oracle’s communications with members of the protected class. The letter that Erin Connell sent to me on May 9, 2019, after our meet and confer discussion, is attached to Daquiz Decl., as Ex. 3. Characterizing my concerns as whether Oracle had communications with employees “about OFCCP’s letter,” Oracle confirmed that it had not. Oracle neither disclosed that it had communications with members of the

protected class about issues related to this case during our May 9, 2019 conference call or in the “confirming letter.” To date, Oracle has provided me with no information about whom it contacted.

7. On May 10, 2019, Oracle suggested a “corrective notice” for OFCCP to send to members of the protected class who had received the original form letter from OFCCP, in an email attached to Connell Decl. as Ex. G.

8. After our telephonic meet and confer, I learned that Oracle’s attorneys (who represent Oracle in this case) had spoken to Oracle employees who are members of the protected class in this action. I raised OFCCP’s concerns about Oracle’s communications with members of the protected classes in my letter to Erin Connell dated May 13, 2019, and also responded to the misstatements in Erin Connell’s May 9, 2019 letter about our “agreements” and positions. A true and correct copy of my May 13, 2019 letter is attached to Daquiz Decl. as Exhibit 4.

9. On Friday, May 17, 2019, before I had an opportunity to respond to Oracle’s May 16, 2019 letter, Oracle filed its Motion to Correct Misleading Communications. I had planned to offer a joint letter as a resolution to the dispute between the parties.

10. Oracle’s May 16, 2019 response to my May 13, 2019 letter is attached to Daquiz Decl. as Exhibit 5.

11. On May 20, 2019, I sent a letter to Erin Connell answering questions she had raised and providing authority she had requested in her May 16, 2019 letter, and proposing a joint letter to members of the protected class to address both parties’ concerns. A copy of my May 20, 2019 letter to Erin Connell is attached to Connell Decl., as Exhibit J.

12. True and correct copies of the Declarations Oracle filed in the *Jewett v. Oracle* state lawsuit, which I reference in my May 20, 2019 letter, are attached hereto as Exhibit 9. Three of the declarations Oracle submitted in the *Jewett* case are members of the protected class in this case, including Ashlee Kling, Barbara Lindhild, and Julie Min Yang Doyle. Oracle concedes that it communicating with employees to gather information relevant to the *Jewett*

litigation, and that they failed to disclose OFCCP's action to these employees at all. During our meet and confers, Oracle has refused to provide information to me about the scope of its communications with members of the protected class in this case, including the names of people Oracle's attorneys interviewed. An email submitted from Oracle's attorneys representing their disclosures to Oracle employees during interviews is attached as Exhibit 7 to Daquiz Decl.

13. After meeting and conferring, on May 21, 2019, I sent an email with a proposed joint letter to be sent to members of the protected class. A copy of the proposal is attached to Connell Decl., as Exhibit L.

14. Oracle sent me a counter-proposal on May 21, 2019, which is attached to Connell Decl., as Exhibit M.

15. Since Oracle's counter-proposal did not include provisions to address the core concerns I had made about Oracle's communications with members of the protected class, I sent a letter to Erin Connell on May 22, 2019, rejecting Oracle's counter-proposal. A copy of this letter is attached to Connell Decl., at Ex. N.

16. On the evening of May 22, 2019, Erin Connell sent me a letter suggesting that Oracle might be willing to consider including provisions to address OFCCP's core concerns. A copy of Erin Connell's May 22, 2019 letter to me is attached to Connell Decl., as Exhibit O.

17. On May 23, 2019, I sent a letter to Erin Connell and attached another proposal to resolve both parties' issues, which included language that her May 22, 2019 suggested that Oracle would accept. A true and correct copy of my May 23, 2019 letter to Erin Connell, including my attached proposal, is attached hereto as Exhibit 10.

18. I discussed OFCCP's May 23, 2019 proposal with Oracle during a telephone call on May 23, 2019. I stressed the importance of providing disclosures to members of the protected class in advance of Oracle talking to them about issues in this case, and the importance of disclosures about the interests of the protected class, Oracle's interests, who Oracle's attorneys represent, and their rights under federal labor laws.

19. On May 24, 2019, Oracle sent me an email that failed to include key aspects of the deals we had discussed on May 23, 2019. A true and correct copy of my email exchanges with Erin Connell on May 23, 2019 and May 24, 2019, are attached hereto as Exhibit 11.

20. On May 24, 2019, I responded to Erin Connell that we had reached an impasse. A true and correct copy of the email I sent to Erin Connell on May 24, 2019 is attached hereto as Exhibit 12.

I declare under the penalty of perjury that the foregoing is true and correct and that this declaration was executed in San Francisco, California on May 24, 2019.



LAURA C. BREMER
Senior Trial Attorney

EXHIBIT 8

U.S. Department of Labor

Office of the Solicitor
300 Fifth Ave., Suite 1120
Seattle, Washington 98104-2397
(206) 757-6762
FAX (206) 757-6761



REDACTED

April 4, 2019

Dear [REDACTED]

We are writing to you because you have been named as a potential injured employee in the *Department of Labor's lawsuit Office of Federal Contract Compliance Programs, United States Department of Labor v. Oracle America, Inc.*, OALJ Case No. 2017-OFC-00006. This case is scheduled to go to trial December 5, 2019, in San Francisco, California. This lawsuit alleges Oracle America, Inc. (Oracle) unlawfully discriminated against its employees by suppressing the pay of its female, Black, and Asian employees. Based on our analysis of Oracle's pay data, we have determined that these employees have been underpaid as much as 20% relative to their peers. We estimate that this discrimination cost these employees at least \$600,000,000 in lost wages from 2013 to the present. The Department of Labor is bringing this lawsuit to end this discrimination, and require Oracle to pay its injured employees for their lost wages.

We are looking to talk to employees who were employed by Oracle any time between 2013 and 2019, who were affected by this discrimination. We want to hear what happened to you. We are specifically looking to talk to **female employees** who worked in **Product Development, Information Technology, and Support lines of business**; **Black and Asian employees** employed in **Product Development**, particularly if Oracle used your prior salary to set your starting salary, placed you in lower paying positions than your peers or channeled you into lower paying positions throughout your career. We are also looking for **applicants or employees for Product Development jobs** recruited through Oracle's college recruiting program.

We want to assure you that you have not been accused of any wrongdoing; and we will keep your identity confidential, unless you volunteer to share your story as a witness in this case.

If you have information related to our lawsuit, would like to find out whether your wages have been impacted or have any questions about this process you may contact the Department of Labor's Oracle witness line at (213) 894-1591. If no one picks up, please leave your contact information, and we will return your call. You may also send us an email at OFCCPvOracleLitigation@dol.gov.

Thank you in advance for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeremiah Miller". The signature is written over a horizontal line.

Jeremiah Miller
Counsel for Civil Rights
Office of the Solicitor
Department of Labor

EXHIBIT 9

D-23

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Telephone: 650-614-7400
Facsimile: 650-614-7401

Attorneys for Defendant
ORACLE AMERICA, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

RONG JEWETT, SOPHY WANG, XIAN
MURRAY, ELIZABETH SUE PETERSEN,
MARILYN CLARK, AND MANJARI KANT,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

ORACLE AMERICA, INC.,

Defendant.

Case No. 17CIV02669

**DECLARATION OF MYRNA
GUERRERO IN SUPPORT OF
DEFENDANT ORACLE AMERICA,
INC.'S OPPOSITION TO PLAINTIFFS'
MOTION FOR CLASS
CERTIFICATION**

17-CIV-02669
DIO
Declaration in Opposition
1689311


FILED
SAN MATEO COUNTY
MAR 06 2019

Clerk of the Superior Court
By 

FILED BY FAX

1 I, Myrna Guerrero, hereby declare as follows:

2 1. I make this declaration in support of Oracle America Inc.'s position that this case
3 should not be certified as a class action. I have personal knowledge of the matters contained in
4 this declaration. If called to testify to the information in this declaration, I could do so
5 competently.

6 2. I know that I will be a class member if the case is allowed to proceed as a class
7 action. I understand that the attorneys who interviewed me and assisted in preparing this
8 declaration for me represent Oracle and do not represent me. Before signing this declaration, I
9 read it carefully to make sure it was accurate, and it is. I was not pressured or required to sign
10 this declaration. I am providing this declaration voluntarily.

11 3. I am a female and current Oracle employee. I have been employed by Oracle for
12 approximately 9 years and I currently work in the Support job function. My system job title is
13 Technical Analyst 1-Support, my job code is 90120, and my career level is IC1. I have held this
14 role during my entire employment with Oracle. I work in the line of business led by Charles
15 Rozwat, Executive Vice President of Customer Support Services. I report directly to Tina Jubbal,
16 Product Support Sr. Manager. I am based in Arcadia, California.

17 4. Prior to Oracle, I worked at Sun Microsystems, Inc. for about 3 years. At Sun, I
18 worked in a support role by assisting customers with opening service tickets. This experience
19 enabled me to develop communication and customer service skills. In 2010, I joined Oracle as
20 part of its acquisition of Sun.

21 5. My team supports existing customers experiencing issues with Oracle's hardware,
22 software, and Cloud products. In my role at Oracle, I work in the Customer Support Hub
23 answering customer calls, assisting with existing service requests, or opening new cases. For
24 example, I work on non-technical service requests submitted through the "Contact Us" link on the
25 customer portal. I assist customers with issues related to utilizing the portal, such as how to
26 register, how to create an account, troubleshooting login issues (including issues with the
27 customer support ID used to login), and guidance on navigating the portal. My job is not
28 technical in nature, so if customers have technical questions about the portal or certain products, I

1 direct them to the MyOracle support team, which consists of Oracle engineers. The engineers do
2 not speak to customers directly, so I function as an intermediary between the two.

3 6. I also assist with service requests in a different portal for internal employees one
4 day per week. A separate team of Technical Analysts maintains a portal for service-related
5 tickets from Oracle employees, referred to as Service Request Handling Information (SRHI).
6 These tickets usually come from customer success managers and contain service instructions for
7 specific customers. The engineer assigned to the service request will then see the special
8 instructions upon opening the service request. This team is short-staffed on Fridays, so my
9 manager asked me and a colleague to help process any tickets that come in on those days. The
10 internal portal operates differently than the customer portal, so I received some online training on
11 how to navigate and input information. I spend about 20 percent of my time each week working
12 on SRHI received through the internal portal.

13 7. In addition, I work on User Acceptance Testing (UAT), which is a phase of
14 software development in which the software is tested in a "live" environment. Specifically, I test
15 updates for the customer portal by working within a special UAT version of the portal. For
16 example, I start by opening a case and creating a service request within the portal. I then identify
17 any issues, such as data input problems, service request ticket errors, latency issues, or other
18 glitches. If I discover any issues with the portal during my testing, I report them to the
19 development teams. As part of my work on UAT, I was required to attend training. This training
20 was essential to my role and I would not have been able to perform the essential functions of the
21 position without this training. UAT testing occurs every three months and runs for three weeks. I
22 typically spend about two to three hours a week on duties related to UAT testing during each
23 cycle. I am one of a few members of my team assigned to work on UAT.

24 8. I am aware that job duties for a given Technical Analyst 1 on my team vary
25 according to focus area, skills, and interests. For example, there was another Technical Analyst 1
26 on my team in the past who also worked in the Customer Support Hub supporting external
27 customers. However, our roles and responsibilities differed because she did not work on the
28 internal portal or UAT testing during her time on my team.

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9. I do not feel disadvantaged as a woman at Oracle. I receive emails about Oracle's diversity-related programs, but I have not yet participated in those programs.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed in Arcadia, California, on February 25, 2019.


Myrna Guerrero

D-83

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Telephone: 650-614-7400
Facsimile: 650-614-7401

Attorneys for Defendant
ORACLE AMERICA, INC.

FILED
SAN MATEO COUNTY
MAR 06 2019

Clerk of the Superior Court

By  DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

RONG JEWETT, SOPHY WANG, XIAN
MURRAY, ELIZABETH SUE PETERSEN,
MARILYN CLARK, AND MANJARI KANT,
individually and on behalf of all others
similarly situated,

Plaintiffs,

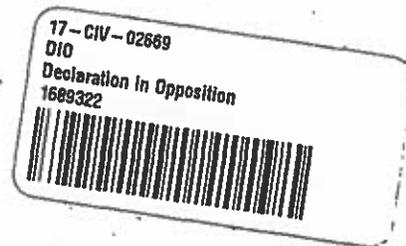
v.

ORACLE AMERICA, INC.,

Defendant.

Case No. 17CIV02669

**DECLARATION OF ASHLEE KLING
IN SUPPORT OF DEFENDANT
ORACLE AMERICA, INC.'S
OPPOSITION TO PLAINTIFFS'
MOTION FOR CLASS
CERTIFICATION**



FILED BY FAX

1 I, Ashlee Kling, hereby declare as follows:

2 1. I make this declaration in support of Oracle America, Inc.'s position that this case
3 should not be certified as a class action. I have personal knowledge of the matters contained in
4 this declaration. If called to testify to the information in this declaration, I could do so
5 competently.

6 2. I know that I will be a class member if the case is allowed to proceed as a class
7 action. I understand that the attorneys who interviewed me and assisted in preparing this
8 declaration for me represent Oracle and do not represent me. Before signing this declaration, I
9 read it carefully to make sure it was accurate, and it is. I was not pressured or required to sign
10 this declaration. I am providing this declaration voluntarily.

11 3. I am a female and current Oracle employee based in Redwood City, California. I
12 work in the Product Development job function. My system job title is Product Manager/Strategy
13 1-ProdDev. Additionally, my job code is 17110 and my career level is IC1. I work in the line of
14 business previously led by Thomas Kurian, who was the President of Product Development for
15 most of my employment with Oracle. I started with Oracle in 2015 and have held my current
16 position throughout my employment.

17 4. I am part of Oracle's Fusion CRM Development organization. My organization
18 develops customer relationship management ("CRM") software. This technology helps
19 businesses store and utilize customer data to manage customer relationships. For example, CRM
20 helps sales teams to increase sales productivity and results by providing a set of tools to optimize
21 the entire sales process—from initial leads to opportunity management through deal closure.

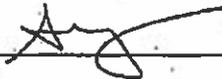
22 5. In my role, I am responsible for producing the customer training videos for
23 CRM-related product updates released by my organization. Normally, CRM-related products are
24 updated once every quarter with new features or modifications. In connection with those updates,
25 Oracle informs and educates its customers about the changes by producing and releasing training
26 videos. I work collaboratively with others on my team to create these videos. A colleague
27 responsible for launching a product update creates a PowerPoint presentation providing details on
28 the update and a script for the demonstration portion of the video. I then record a voiceover for

1 the PowerPoint presentation, a demonstration of the new product features (my computer screen is
2 recorded while I demonstrate the updated portions of the product), and a voiceover for the
3 demonstration. When the video is complete, I send the video to the development team to upload
4 to the customer portal for customer review. In addition, I also produce standalone software
5 demonstration videos that my colleagues use when meeting with customers. In total, I produce
6 approximately ten videos per quarter.

7 6. I am unaware of any other Oracle employee with my system job title and job code
8 in California whose sole responsibility is to produce training videos related to product updates
9 and enhancements. Because of the specialized nature of my job duties, I do not believe I could
10 assume another Product Manager/Strategy 1's responsibilities without significant training.

11
12 I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct.

14 Executed in Redwood City, California, on Feb 26, 2019.

15
16 
17 _____
18 Ashlee Kling

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Attorneys for Defendant
ORACLE AMERICA, INC.

FILED
SAN MATEO COUNTY
MAR 06 2019
Clerk of the Superior Court
By 

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

RONG JEWETT, SOPHY WANG, XIAN
MURRAY, ELIZABETH SUE PETERSEN,
MARILYN CLARK, AND MANJARI KANT,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

ORACLE AMERICA, INC.,

Defendant.

Case No. 17CIV02669

**DECLARATION OF BARBARA
LUNDHILD IN SUPPORT OF
DEFENDANT ORACLE AMERICA,
INC.'S OPPOSITION TO PLAINTIFFS'
MOTION FOR CLASS
CERTIFICATION**

FILED BY FAX

17-CIV-02669
DIO
Declaration in Opposition
1689317


1 I, Barbara Lundhild, hereby declare as follows:

2 1. I make this declaration in support of Oracle America, Inc.'s position that this case
3 should not be certified as a class action. I have personal knowledge of the matters contained in
4 this declaration. If called to testify to the information in this declaration, I could do so
5 competently.

6 2. I know that I will be a class member if the case is allowed to proceed as a class
7 action. I understand that the attorneys who interviewed me and assisted in preparing this
8 declaration for me represent Oracle and do not represent me. Before signing this declaration, I
9 read it carefully to make sure it was accurate, and it is. I was not pressured or required to sign
10 this declaration. I am providing this declaration voluntarily.

11 3. I am a female and currently work for Oracle in Redwood City, California. My job
12 title is Product Manager/Strategy 6-ProdDev, but this title does not reflect my responsibilities. I
13 work in the Product Development job function, my job code is 17160, and my career level is IC6.
14 I am a member of Oracle's Exadata organization. I work in the line of business previously led by
15 Thomas Kurian, the former President of Product Development.

16 4. I joined Oracle's Canadian affiliate, Oracle Canada, in 1996 as a consultant. In
17 2001, I joined Oracle America as a solutions specialist for the Enterprise Technology Center,
18 which was part of the sales organization and provided customers with information on utilizing the
19 emerging features of Oracle Database. I was laid off in 2003, but soon thereafter got a job as a
20 product manager for Oracle Database in the Product Development job function. I was able to
21 transition to a development role because of my experience and educational background—I have a
22 degree in mathematics with a major in computer science and a minor in business.

23 5. After my product manager position for Oracle Database, I became a product
24 manager in a specialty area within Oracle Database called Oracle Real Application Clusters
25 ("Oracle RAC"), which is one of the options that Oracle sells for the database. Oracle RAC
26 allows users to access Oracle Database from multiple compute nodes, or "systems" in a cluster of
27 many systems. To access data that sits within a computer's storage, a user installs software that
28 runs on a server. Oracle RAC is a system of networking multiple servers to access the same data

1 on the same storage.

2 6. My current role at Oracle involves working with one of its biggest products, called
3 Exadata. In February 2010, I moved to the Exadata team, which is another specialty area within
4 Oracle Database. Exadata utilizes Oracle Database and Oracle RAC, so I was able to apply my
5 prior experience to this new role. Exadata is comprised of two components: the Exadata database
6 machine and the Exadata storage server. The Exadata database machine combines hardware and
7 software to enable customers to run Oracle Database within their systems, which are located
8 onsite with the customer. This physical hardware runs Oracle Database and includes storage,
9 computer servers, networking, and other functionalities wrapped up under one umbrella. The
10 Exadata storage server is a component of the Exadata machine and is part software and part
11 hardware. My career level was IC5 when I moved into Exadata, and I was promoted to my
12 current IC6 career level and job title in 2015.

13 7. Exadata is a product that is unique to Oracle and has grown tremendously in recent
14 years. It has a one-of-a-kind functionality that increases the speed with which a computer can
15 access data. At a high level, it does so by reducing the amount of data that must be processed by
16 a computer server when conducting a search within the data. Exadata is a specialized solution to
17 run Oracle Database, and it can expand into a computer's storage subsystem and streamline data
18 processing in a way that other competitors, such as IBM, cannot do. This is because Oracle owns
19 the underlying software technology for Oracle Database and has built this technology into
20 Exadata. Oracle Database could run on an IBM server, but not with the added Exadata feature.

21 8. Management has clearly communicated to my team that Oracle's cloud offering is
22 one of the biggest drivers of its strategic direction and a priority area of focus for the company.
23 As one of the fastest-growing cloud services at Oracle, Exadata plays an important part of
24 Oracle's overall direction, development, and revenue generation. One of the unique offerings
25 within Exadata is called Cloud at Customer. Cloud at Customer is a system that allows Oracle
26 engineers to remotely manage the hardware that sits in the customer's data centers by connecting
27 through what we call a "gateway." I do not manage Cloud at Customer, but my team supports the
28 teams that install and manage the Cloud at Customer systems. . Customers buy a cloud service

1 subscription, and Oracle physically installs hardware in the customers' data center. My team
2 provides support to other internal teams that do installation of this solution, and we help
3 customers solve any problems with this technology.

4 9. I currently have thirteen (13) direct reports who are based in the U.S. (two in
5 California), Australia, Brazil, China, Korea, and India. My direct reports have the job title of
6 Software Developer, and their career levels are IC4 and IC5. I consider them to be senior
7 technical engineers with a set of core competencies, but each performs different work, and they
8 have diverse skills and experience.

9 10. Generally, I think of my team as a liaison between Oracle's Development
10 organization and its customers. We are essentially the first responders to our customers'
11 technology teams that we work with: we mentor and assist them with adopting Oracle's
12 technology, help them understand how the technology operates, and assist them with developing
13 best practices for using and implementing our technology. In particular, we assist customers with
14 the installation of Exadata, copying their company's data into Exadata, initial troubleshooting,
15 and preparing for the customer's live workload to run on our systems. Our underlying goal is that
16 the customer be satisfied with our product and services and recommend Oracle to other potential
17 customers.

18 11. My role also involves working alongside Oracle's Support and Product
19 Development organizations in deescalating problems with customers. If one of Oracle's
20 executives receives an angry call from a customer about issues with Exadata, that executive will
21 call me to assist with deescalating the issue and ensuring that the customer feels that he or she is
22 receiving the best possible service from Oracle's most qualified experts on that particular issue.

23 12. My team works with Oracle's top customers. I consider some of our customers to
24 be Oracle's core strategic customers; those that have purchased a lot of our technology and with
25 whom Oracle teams regularly interact. Other customers are smaller and may be trying Oracle
26 Database for the first time or testing out a new feature or functionality that we just released. My
27 team supports customers on both ends of this spectrum to ensure that the features we developed
28 are working as we intended.

1 13. Within my team, my role is partly hands-on. I help my engineers respond to
2 various customer issues, I get involved in daily escalation meetings with management, our
3 installation team, and other teams to make sure we are on top of resolving client issues as quickly
4 as possible, and I assign my direct reports to handle the most pressing issues of the day.
5 Additionally, I sometimes meet directly with customers who have problems or questions. The
6 customer does not pay for our services, as with some other Oracle Service organizations (such as
7 Oracle Consulting Services or Advanced Customer Services) where customers have to pay for the
8 Oracle employee's services. Rather, the service we provide is complimentary. When we go
9 onsite, Oracle pays for it.

10 14. Given my years of experience and specialized knowledge with Exadata, I consider
11 my role to be different from my colleagues with the same job title in other organizations. My role
12 is more customer focused and improving the customer's experience with our products, whereas
13 my colleagues are more focused on the product and strategy around increasing its penetration in
14 the market. Generally, Oracle employees in the Product Manager/Strategy 6-ProdDev role are
15 responsible for specific products within the Product Development job function, such as Exadata.
16 Because our experience is so specialized in a particular product, it would be difficult to perform
17 the same role in a different organization working on a different product, even within the same job
18 title. For example, I am required to make decisions on a daily basis requiring me to have an in-
19 depth knowledge of Exadata, such as troubleshooting escalated issues or whether my team needs
20 to get involved on an Exadata-related customer issue (as opposed to letting Support handle the
21 problem alone).

22 15. Not everyone on my team has equivalent skillsets, so I assign work based on my
23 team members' specific skillsets and area of specialization. For example, my team covers
24 storage, operating systems, and database. Although everyone on my team must have rudimentary
25 knowledge of all three components, some members on my team have more in-depth knowledge
26 about the operating system, and others in database. And some of Oracle's large strategic
27 customers will have one of my engineers assigned to them based on their specialized knowledge
28 and availability for either engagements that last anywhere from a few days to a few weeks, or

1 long-term engagements depending on the scope of the project.

2 16. Given the importance of Exadata to Oracle's business and customers, I have a
3 targeted skillset that I seek in hiring new team members. The skillset I look for has evolved over
4 time, as Exadata and other Oracle systems have developed and modernized. For instance, I look
5 for individuals with experience in customer relations and effective problem solving, rather than
6 just coding experience. Additionally, I look for candidates who have experience with Oracle's
7 technology, because without it, they cannot work with Exadata. Experience with Oracle Database
8 and some of its core functionalities, such as Oracle RAC and Oracle Automatic Storage
9 Management, is crucial. If a candidate understands these systems, I can teach that person how
10 Exadata operates. Ten years ago, when Exadata was a new product, I did not prioritize candidates
11 with that level of experience because it was so rare. Now that there is a bigger pool of candidates
12 with these skills, I am much less likely to consider a resume without them.

13 17. In terms of setting the salary of new hires, I generally offer starting pay within the
14 salary bands provided by Oracle's Human Resources department, which are based on various
15 factors, including location. Once I am ready to make an offer to a candidate, I attach a summary
16 of my impressions and their experience along with other documents, and send it up Oracle's
17 approval chain. Unless I am deviating outside of the salary band for a particular role or there is a
18 hiring freeze for my organization, my decisions regarding particular candidates are generally
19 approved without any questions or pushback.

20 18. Even though I had access to a candidate's prior salary before Oracle ended this
21 practice in October 2017, that information did not play a big role in my salary offer decisions.
22 The candidate's skillset (as discussed above) is the first and most important thing I consider when
23 determining compensation.

24 19. As for salary increases for current employees, I participate in ranking and rating
25 the performance of my thirteen direct reports for focal increases, bonuses, and equity allocations.
26 My recommendations are based on how the employee has performed his or her tasks and
27 responsibilities, and how I measure success is dependent on the specific workload and
28 expectations for each employee. I also consider certain subjective factors in my decisions, such

1 as whether the employee has taken initiative to take on extra projects or if an employee received
2 special praise from a customer or coworker for excellent work. For instance, there are often tasks
3 and projects that arise outside of my team's normal work flow, such as drafting instructions for
4 testing a certain part of Exadata or helping customers get their system back on track. An
5 employee's enthusiasm and drive to assist in those situations would influence a higher rating or
6 ranking from me. During my tenure as a manager, my compensation recommendations have not
7 been questioned or overruled by my manager.

8 20. I have never considered gender in making my recommendations.

9
10 I declare under penalty of perjury of the laws of the State of California that the foregoing
11 is true and correct.

12 Executed in Redwood City, California, on 1 March, 2019.

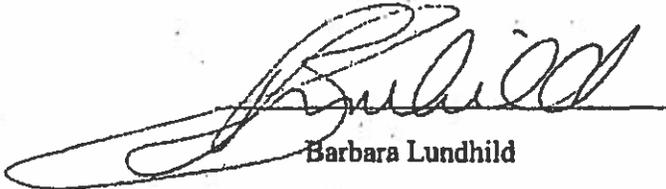
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Barbara Lundhild

EXHIBIT 10

U.S. Department of Labor

Office of the Solicitor
90 7th Street, Suite 3-700
San Francisco, California 94103



May 23, 2019

VIA E-MAIL

Erin M. Connell
ORRICK, HERRINGTON & SUTCLIFFE LLP
405 Howard Street
San Francisco, CA 94105-2669
econnell@orrick.com

Re: OFCCP v. Oracle America, Inc., OALJ Case No. 2017-OFC-00006

Dear Erin:

This letter responds to the letter you sent May 22, 2019. Your letter misstates the events and many of the positions taken during our numerous meet and confers regarding the parties' respective communications with Oracle current and former employees for whom OFCCP seeks relief. Further, it remains our belief that Oracle is improperly trying to undermine OFCCP's communications with the Oracle employees for whom OFCCP seeks relief, and upon whom the Department of Labor relies for obtaining information to enforce all its program areas. As I previously mentioned, the Supreme Court has recognized the importance of communications between employees and the Department of Labor for the Department of Labor to fulfill its mission. And, anti-retaliation and anti-interference provisions, including 41 CFR 60-1.32 and 29 CFR 18.12 (upon which Oracle seeks to rely), are intended to protect communications between the government and employees.

Your letter seeks to obtain advantage by delaying OFCCP's motion against Oracle, even though Oracle filed its motion before we had completed our negotiations, and even though OFCCP remains seriously concerned that Oracle's motion is itself is being used to discourage its employees from cooperating or communicating with OFCCP. It is inaccurate to say that we did not telephonically meet and confer. We notified you of our intent to file a motion if we could not resolve our concerns about Oracle's communications with its employees whose interests we represent in this case on May 20, 2019, and had two telephonic meet and confers in an attempt to resolve these issues since that time. We note that Oracle, on the other hand, filed its motion before we had telephonically discussed both of the parties' positions regarding their respective communications with the members of the protected class about this case. Despite our concerns that Oracle's motion could chill members of the protected class from contacting OFCCP, you sent the motion to the FOIA reading room a day earlier than the four business days required by

Judge Clark's order.¹

Setting aside many of the arguments that you make, with which we disagree, the end of your letter suggests that we may be able to reach a compromise on a letter to send to former and current Oracle employees for whom OFCCP seeks relief.

- Your May 22, 2019 letter states that Oracle's "counter-proposal contained many of the statements OFCCP requested, including that Oracle's counsel does not represent them." In fact, Oracle's counter-proposal does not contain this language. We will add this language to the letter.
- Your May 22, 2019 letter also suggests that Oracle would consider including a statement notifying employees about their rights under anti-retaliation laws. We will put this language back into the proposed letter.
- Your May 22, 2019 letter also states that Oracle's attorneys "gave the employees sufficient information that communicated to them that their interests were potentially adverse to Oracle, and that any information they provided could be used in Oracle's defense," and you state that "if and when Oracle or its counsel chooses to speak to any employee about this litigation, it will give appropriate admonitions at that time." If so, then it should have no objection to including admonitions like the ones it claims it will give anyway, in the letter. We will include this language (as well as the types of admonitions Oracle stated it gave to employees during their interviews) in a proposal.

During our prior meet and confer discussions, Oracle declined to send the letter jointly. OFCCP is willing to send the letter, and notes that if the letter is from OFCCP, OFCCP should be able to include information about employees' rights and similar information, as long as the letter is not inaccurate. And, of course, if we send the letter, it will be on Department of Labor letterhead (the letterhead for both OFCCP and the Office of the Solicitor say U.S. Department of Labor at the top).

To address our concerns about Oracle's communications with the employees for whom OFCCP seeks relief, the letter should go to all females who worked in the Product Development, Support, or Information Technology job functions and all Blacks and Asians who worked in the Product Development job function at Oracle's headquarters from 2013 through the present. As I stated during our telephonic meet and confer on May 21, 2019, sending a letter to all members of the protected class Oracle might contact in regards to the claims in this case (or related claims in *Jewett*) would provide Oracle with some protection against future concerns that it did not make

¹ Your letter also misrepresents our position about sending Oracle's motion to the FOIA reading room. We did demand that Oracle withdraw its unfounded motion, and indicated that its negative consequences could be avoided by not forwarding it to the FOIA reading room. However, we never suggested Oracle ignore a court order. In fact, I specifically told you during our telephonic meet and confer on May 21, that we would need to talk to Judge Clark about whether we could avoid sending the motion to the FOIA reading room, and doing so would require his approval.

Erin M. Connell
May 23, 2019
Page 3

such disclosures. If you provide us contact information for all such former and current employees (as Oracle should have provided in discovery), we will send the letter. Alternatively, you could provide us with the contact information of the people you contacted, so we make sure to send the letter. As a final alternative, we would agree that Oracle could send the letter to the persons in contacted in the protected class regarding either this case or *Jewett* within one week of our agreement. This letter should also be provided to all members of the protected class from whom you seek information at least 24 hours in advance of any attempts to obtain information from them. Note that the Rules of Professional Responsibility require that disclosures of conflicts be provided in writing.

Attached is a revised proposal that reflects the information your letter suggests Oracle will agree to include in a letter to resolve Oracle's pending motion regarding OFCCP's communication with Oracle employees, and the motion that OFCCP is drafting regarding Oracle's communications with employees who may receive relief as a result of OFCCP's enforcement action. If Oracle is actually prepared to be candid with its employees, we expect that it will agree to this proposal. Please let us know by 3 p.m. today if you agree. I am available to discuss the proposed compromise further by telephone before then.

Sincerely,

A handwritten signature in cursive script that reads "Laura C. Bremer". The signature is written in black ink and is positioned above a horizontal line.

Laura C. Bremer
Senior Trial Attorney

You may have received recent correspondence sent by my office on behalf of the U.S. Department of Labor on April 4, 2019. As a follow up to that ~~April 4, 2019~~ correspondence sent by my office, we are again writing to you about the lawsuit that the U.S. Department of Labor's Office of Federal Contract Compliance Programs ("OFCCP") brought and is pending against Oracle: *OFCCP, U.S. Dept. of Labor v. Oracle America, Inc.*, OALJ Case No. 2017-OFC-00006. In the lawsuit, OFCCP alleges that since 2013, Oracle engaged in compensation discrimination against Asian, Black, and female employees in the Product Development, Support, and Information Technology job functions at Oracle's Redwood Shores headquarters. Oracle denies these allegations. ~~They have not been proven in court or in any judicial forum, meaning there has been no determination that Oracle engaged in any discriminatory conduct or that any lost wages are due.~~

The case is scheduled to go to hearing before an administrative law judge in December 2019. OFCCP seeks relief for current and former female, Black, and Asian Oracle employees, including managers, in the Product Development, Support, and Information Technology job functions. As a remedy, OFCCP seeks to recover back wages it claims were lost as a result of the alleged discrimination. OFCCP also seeks changes to Oracle's compensation practices going forward, including adjustments in pay rates in the event it proves the existence of gender and/or race discrimination reflected in pay rates. If OFCCP wins its lawsuit and money is awarded to former and current Oracle employees, you will be notified at that time, regardless of whether you respond to this correspondence.

Oracle and its attorneys do not represent you in OFCCP's lawsuit against Oracle seeking relief for current and former female, Black, and Asian Oracle employees (including managers) for compensation discrimination. Oracle and its attorneys represent Oracle in the lawsuit brought by OFCCP. Any information you provide to Oracle might be shared with and used by Oracle for the purpose of defending Oracle against OFCCP's lawsuit, and eliminating or reducing any relief that may be granted to former and current Oracle employees. If Oracle or its attorneys contact you to ask questions in connection with this lawsuit, you are not required to talk to them, although you are free to do so. It is up to you whether you provide information to Oracle or its attorneys, and there will be no negative consequences to you if you do not agree to any request for an interview or request for information by Oracle concerning these claims of alleged gender and race pay discrimination.

If you ~~You may have received recent correspondence sent by my office on behalf of the U.S. Department of Labor regarding this lawsuit, y.~~ You are not required to respond to that correspondence in order to recover any money in this case. You are not required to respond to that correspondence at all, and are not required to talk to OFCCP or any attorneys from the U.S. Department of Labor, although you are free to provide information to OFCCP and its attorneys that relates to this lawsuit if you choose to do so. You may agree to participate in the lawsuit on behalf of ~~either Oracle or OFCCP~~, including testifying at the hearing later this year, without negative consequences from Oracle ~~or from OFCCP~~. Federal law prohibits any federal contractor from discouraging, intimidating, or preventing any employee from providing information to the government, including providing testimony to the administrative law judge.

If you have any questions about the lawsuit or wish to provide information to OFCCP, you may contact the Department of Labor's Oracle witness line at (213) 894-1591. You may also contact the Department

You may have received recent correspondence sent by my office on behalf of the U.S. Department of Labor on April 4, 2019. ~~As a follow up to that April 4, 2019 correspondence sent by my office, we are again-writing to you about the lawsuit that the U.S. Department of Labor's Office of Federal Contract Compliance Programs ("OFCCP") brought and is pending against Oracle: *OFCCP, U.S. Dept. of Labor v. Oracle America, Inc.*, OALJ Case No. 2017-OFC-00006. In the lawsuit, OFCCP alleges that since 2013, Oracle engaged in compensation discrimination against Asian, Black, and female employees in the Product Development, Support, and Information Technology job functions at Oracle's Redwood Shores headquarters. Oracle denies these allegations. They have not been proven in court or in any judicial forum, meaning there has been no determination that Oracle engaged in any discriminatory conduct or that any lost wages are due.~~

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Oracle and its attorneys do not represent you in OFCCP's lawsuit against Oracle seeking relief for current and former female, Black, and Asian Oracle employees (including managers) for compensation discrimination. Oracle and its attorneys represent Oracle in the lawsuit brought by OFCCP. Any information you provide to Oracle might be shared with and used by Oracle for the purpose of defending Oracle against OFCCP's lawsuit, and eliminating or reducing any relief that may be granted to former and current Oracle employees. If Oracle or its attorneys contact you to ask questions in connection with this lawsuit, you are not required to talk to them, although you are free to do so. It is up to you whether you provide information to Oracle or its attorneys, and there will be no negative consequences to you if you do not agree to any request for an interview or request for information by Oracle concerning these claims of alleged gender and race pay discrimination.

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If you have any questions about the lawsuit or wish to provide information to OFCCP, you may contact the Department of Labor's Oracle witness line at (213) 894-1591. You may also contact the Department

EXHIBIT 11

Bremer, Laura - SOL

From: Connell, Erin M. <econnell@orrick.com>
Sent: Friday, May 24, 2019 11:07 AM
To: Bremer, Laura - SOL; Flores, Christine J.
Cc: Garcia, Norman - SOL; Miller, Jeremiah - SOL; Pilotin, Marc A - SOL; Siniscalco, Gary R.; Parker, Warrington; Mantoan, Kathryn G.; Shwartz, Robert S.; Kaddah, Jacqueline D.; Shwartz, Robert S.
Subject: RE: OFCCP v Oracle; OALJ Case No. 2017-OFC-00006
Attachments: 2019-05-23 Attachment - Notice to Employees - OFCCP response to Oracle edits(Oracle edits 5-24).docx

Laura,

I write in response to your letter yesterday, and to follow up on our 4pm telephone call.

As an initial matter, we were surprised to receive your letter yesterday afternoon. When we last spoke on Tuesday (May 21), after we sent you our revisions to OFCCP's proposal for a "corrective notice," we were under the impression you were going to send us a redline/counter proposal to the version we sent you. Instead, on Wednesday (May 22) you sent me a letter attaching no redline or counter proposal and stating "[w]e are now at an impasse and we will file a motion seeking a protective order, injunctive relief and/or for leave to amend our complaint to add a claim for violation of 41 CFR 60-1.32 (the theory behind which we still don't understand, but vaguely believe will somehow be based on our contacts with putative class members in the *Jewett* case, and on the fact that we filed our Motion to Correct OFCCP's Misleading Communications to Oracle Employees in the first place).

Then, yesterday afternoon we received another letter from you that reversed course, and instead attached a counter-proposal and redline, but requested a response in approximately two hours' time. When we eventually did speak at 4pm, I told you we are still interested in trying to reach a resolution, but also confirmed I needed until today to get back to you so I could discuss things with Oracle. You told me you only had "authority" to give us until yesterday or else OFCCP would file the motion referenced above. We eventually agreed upon a "deadline" of noon today.

As I expressed yesterday, we are interested in resolving this issue if we can. On yesterday's call, you made clear that a condition of reaching resolution is that we would immediately notify Judge Clark that our pending motion is withdrawn. Accordingly, OFCCP appears to acknowledge that the purpose of the corrective notice is to resolve the concerns we have raised that motion. But you also acknowledged that a second result of us reaching resolution would be that OFCCP will not file its motion seeking a protective order, injunctive relief and/or for leave to amend our complaint to add a claim for violation of 41 CFR 60-1.32 (or conversely, if we don't reach resolution, OFCCP will file that motion today).

The posture and timing of these events, combined with the content of the counter-proposal you sent yesterday, certainly feels to us like OFCCP is using the threat of a motion that will make inflammatory (yet meritless) allegations of misconduct against Oracle and its counsel to coerce and intimidate us into agreeing upon a notice that would interfere with Oracle's communications with its own employees and unfairly prejudice Oracle, including because it would allow OFCCP to send a second notice to an expanded group of "class members" that when read in totality suggests Oracle has done, or is likely to do, something retaliatory or deceptive. Your May 20 letter (which ironically says I am "treating this entire discussion as a game," yet simultaneously threatens to seek the "depositions or Orrick attorneys [and Oracle's in house attorneys])," contains similar overtures.

Nevertheless, I'm attaching a counter-proposal to the proposed notice you sent yesterday. On the issue of whether we will agree to provide OFCCP updated contact information (*i.e.*, contact information for the approximately 800 people

Assuming that you are interested in further substantive discussions to see if we can reach agreement on a letter to be sent to current and former Oracle employees, I am willing to meet after 3. But, I have a hard stop at 4:30 today. If you can talk earlier, let me know.

Laura C. Bremer
Senior Trial Attorney
Office of the Solicitor
U.S. Department of Labor
90 7th Street, Suite 3-700
San Francisco, California 94103
(415) 625-7757

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From: Connell, Erin M. <econnell@orrick.com>
Sent: Thursday, May 23, 2019 2:15 PM
To: Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Flores, Christine J. <cflores@orrick.com>
Cc: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Pilotin, Marc A - SOL <Pilotin.Marc.A@DOL.GOV>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Parker, Warrington <wparker@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Shwartz, Robert S. <rshwartz@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Shwartz, Robert S. <rshwartz@orrick.com>
Subject: RE: OFCCP v Oracle; OALJ Case No. 2017-OFC-00006

Hi Laura,
I'm tied up with calls and meetings in other matters this afternoon, but could speak at 4 if that works for you.
Thanks,
Erin

From: Bremer, Laura - SOL <Bremer.Laura@dol.gov>
Sent: Thursday, May 23, 2019 12:45 PM
To: Flores, Christine J. <cflores@orrick.com>
Cc: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Pilotin, Marc A - SOL <Pilotin.Marc.A@DOL.GOV>; Connell, Erin M. <econnell@orrick.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Parker, Warrington <wparker@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Shwartz, Robert S. <rshwartz@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>
Subject: RE: OFCCP v Oracle; OALJ Case No. 2017-OFC-00006

Erin,

This letter responds to your letter sent yesterday evening. Note that I have requested a response by 3 p.m. today.

Laura C. Bremer
Senior Trial Attorney
Office of the Solicitor
U.S. Department of Labor
90 7th Street, Suite 3-700
San Francisco, California 94103
(415) 625-7757

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You may have received recent correspondence sent by my office on behalf of the U.S. Department of Labor on April 4, 2019. As a follow up to that April 4, 2019 correspondence sent by my office, we are again writing to you about the lawsuit that the U.S. Department of Labor's Office of Federal Contract Compliance Programs ("OFCCP") brought and is pending against Oracle: *OFCCP, U.S. Dept. of Labor v. Oracle America, Inc.*, OALJ Case No. 2017-OFC-00006. In the lawsuit, OFCCP alleges that since 2013, Oracle engaged in compensation discrimination against Asian, Black, and female employees in the Product Development, Support, and Information Technology job functions at Oracle's Redwood Shores headquarters. Oracle denies these allegations. They have not been proven in court or in any judicial forum, meaning there has been no determination that Oracle engaged in any discriminatory conduct or that any lost wages are due. ~~They have not been proven in court or in any judicial forum, meaning there has been no determination that Oracle engaged in any discriminatory conduct or that any lost wages are due.~~

The case is scheduled to go to hearing before an administrative law judge in December 2019. OFCCP seeks relief for current and former female, Black, and Asian Oracle employees, including managers, in the Product Development, Support, and Information Technology job functions. As a remedy, OFCCP seeks to recover back wages it claims were lost as a result of the alleged discrimination. OFCCP also seeks changes to Oracle's compensation practices going forward, including adjustments in pay rates in the event it proves the existence of gender and/or race discrimination reflected in pay rates. If OFCCP wins its lawsuit and money is awarded to former and current Oracle employees, you will be notified at that time, regardless of whether you respond to this correspondence.

~~Oracle and its attorneys do not represent you in OFCCP's lawsuit against Oracle seeking relief for current and former female, Black, and Asian Oracle employees (including managers) for compensation discrimination. Oracle and its attorneys represent Oracle in the lawsuit brought by OFCCP. Any information you provide to Oracle might be shared with and used by Oracle for the purpose of defending Oracle against OFCCP's lawsuit, and eliminating or reducing any relief that may be granted to former and current Oracle employees. If Oracle or its attorneys contact you to ask questions in connection with this lawsuit, you are not required to talk to them, although you are free to do so. It is up to you whether you provide information to Oracle or its attorneys, and there will be no negative consequences to you if you do not agree to any request for an interview or request for information by Oracle concerning these claims of alleged gender and race pay discrimination.~~

if you ~~You may have received recent correspondence sent by my office on behalf of the U.S. Department of Labor regarding this lawsuit, y.~~ You are not required to respond to that correspondence (or this correspondence) in order to recover any money in this case. You are not required to respond to that either correspondence at all, and are not required to talk to OFCCP or any attorneys from the U.S. Department of Labor, although you are free to provide information to OFCCP and its attorneys that relates to this lawsuit if you choose to do so. You may agree to participate in the lawsuit on behalf of either Oracle or OFCCP or on behalf of Oracle, including testifying at the hearing later this year, without negative consequences from Oracle or from OFCCP or from OFCCP. Federal law prohibits any federal contractor from discouraging, intimidating, or preventing any employee from providing information to the government, including providing testimony to the administrative law judge.

EXHIBIT 12

Bremer, Laura - SOL

From: Bremer, Laura - SOL
Sent: Friday, May 24, 2019 2:02 PM
To: Connell, Erin M.; Flores, Christine J.
Cc: Garcia, Norman - SOL; Miller, Jeremiah - SOL; Pilotin, Marc A - SOL; Siniscalco, Gary R.; Parker, Warrington; Mantoan, Kathryn G.; Shwartz, Robert S.; Kaddah, Jacqueline D.; Shwartz, Robert S.
Subject: RE: OFCCP v Oracle; OALJ Case No. 2017-OFC-00006

Erin,

On May 22, 2019, we believed that we were at an impasse because of Oracle's refusal to address our key concerns -- that Oracle make disclosures to members of the protected class about this case, the roles of the parties and their counsel (including that Oracle's interests do not align with members of the protected classes in this case), and about their rights, so they can make an informed decision about their participation in this case without coercion by Oracle. Your letter sent at the end of the day on May 22, 2019, suggested that you were willing to include statements in a letter to be sent to the protected class, including "that Oracle's counsel does not represent them," and statements of employees' rights. Therefore, we attempted once more to reach a compromise. During our call at the end of the day yesterday, I stated that it would be a deal-breaker if the letter did not go to all members of the protected class in advance of Oracle or its attorneys seeking to talk to them about this case, and if the letter did not include the statement your May 22, 2019 letter said you would include -- that Oracle's counsel does not represent them (or something similar). Nevertheless, your counter-proposal does not include these key components of OFCCP's compromise proposal. In addition, you deleted the statement that, "You may also contact the Department of Labor's witness line if you believe Oracle treated you negatively after you provided information to OFCCP or asserted your rights under Labor laws." We have made every effort to reach a compromise, but it is clear that we will not be able to reach agreement.

Laura C. Bremer
Senior Trial Attorney
Office of the Solicitor
U.S. Department of Labor
90 7th Street, Suite 3-700
San Francisco, California 94103
(+1) 625-7757

From: Connell, Erin M. <econnell@orrick.com>
Sent: Friday, May 24, 2019 11:07 AM
To: Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Flores, Christine J. <cflores@orrick.com>
Cc: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Pilotin, Marc A - SOL <Pilotin.Marc.A@DOL.GOV>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Parker, Warrington <wparker@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Shwartz, Robert S. <rshwartz@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Shwartz, Robert S. <rshwartz@orrick.com>
Subject: RE: OFCCP v Oracle; OALJ Case No. 2017-OFC-00006

Laura,

I write in response to your letter yesterday, and to follow up on our 4pm telephone call.

As an initial matter, we were surprised to receive your letter yesterday afternoon. When we last spoke on Tuesday (May 21), after we sent you our revisions to OFCCP's proposal for a "corrective notice," we were under the impression you

were going to send us a redline/counter proposal to the version we sent you. Instead, on Wednesday (May 22) you sent me a letter attaching no redline or counter proposal and stating “[w]e are now at an impasse and we will file a motion seeking a protective order, injunctive relief and/or for leave to amend our complaint to add a claim for violation of 41 CFR 60-1.32 (the theory behind which we still don’t understand, but vaguely believe will somehow be based on our contacts with putative class members in the *Jewett* case, and on the fact that we filed our Motion to Correct OFCCP’s Misleading Communications to Oracle Employees in the first place).

Then, yesterday afternoon we received another letter from you that reversed course, and instead attached a counter-proposal and redline, but requested a response in approximately two hours’ time. When we eventually did speak at 4pm, I told you we are still interested in trying to reach a resolution, but also confirmed I needed until today to get back to you so I could discuss things with Oracle. You told me you only had “authority” to give us until yesterday or else OFCCP would file the motion referenced above. We eventually agreed upon a “deadline” of noon today.

As I expressed yesterday, we are interested in resolving this issue if we can. On yesterday’s call, you made clear that a condition of reaching resolution is that we would immediately notify Judge Clark that our pending motion is withdrawn. Accordingly, OFCCP appears to acknowledge that the purpose of the corrective notice is to resolve the concerns we have raised that motion. But you also acknowledged that a second result of us reaching resolution would be that OFCCP will not file its motion seeking a protective order, injunctive relief and/or for leave to amend our complaint to add a claim for violation of 41 CFR 60-1.32 (or conversely, if we don’t reach resolution, OFCCP will file that motion today).

The posture and timing of these events, combined with the content of the counter-proposal you sent yesterday, certainly feels to us like OFCCP is using the threat of a motion that will make inflammatory (yet meritless) allegations of misconduct against Oracle and its counsel to coerce and intimidate us into agreeing upon a notice that would interfere with Oracle’s communications with its own employees and unfairly prejudice Oracle, including because it would allow OFCCP to send a second notice to an expanded group of “class members” that when read in totality suggests Oracle has done, or is likely to do, something retaliatory or deceptive. Your May 20 letter (which ironically says I am “treating this entire discussion as a game,” yet simultaneously threatens to seek the “depositions or Orrick attorneys [and Oracle’s in house attorneys]),” contains similar overtures.

Nevertheless, I’m attaching a counter-proposal to the proposed notice you sent yesterday. On the issue of whether we will agree to provide OFCCP updated contact information (*i.e.*, contact information for the approximately 800 people who have joined the “class” since we last produced contact information to OFCCP in 2017 pursuant to Judge Larsen’s order), Oracle declines to do so. As we explained yesterday, the purpose (and origin) of this “corrective notice” is to “correct” the misleading correspondence OFCCP sent to Oracle employees – it is not to allow OFCCP a second opportunity to reach out to an even greater number of “class members” for purposes of building OFCCP’s case against Oracle.

You took the position yesterday that sending the proposed notice to the entire “class” would benefit Oracle because it would give us a stronger defense against OFCCP’s later arguments that the admonitions we give employees before speaking with them about this case are not sufficient. But you also conceded that sending this notice will not stave off those arguments – OFCCP still intends to bring them, and it is OFCCP’s position that they must be given in writing and at least 24 hours in advance of any discussion between Oracle’s counsel and any “class” member. As we indicated yesterday, we disagree that any such obligations exist, and you could cite no authority saying they do in this context. And there is certainly no obligation that Oracle give admonitions to employees (or former employees) with whom it never intends to speak at all about this case. For these reasons, the attached counter-proposal also removes the “admonitions” OFCCP included (and which you explained were copied from the admonitions we gave in *Jewett*, even though OFCCP continues to take the position those admonitions are insufficient, and apparently intends to use them as one of the bases for its motion).

We also removed the assurance of confidentiality, as that is obviously at issue in our pending motion to compel.

I am available for most of this afternoon to discuss these issues further if OFCCP wishes to do so. Please let me know.

Thanks,
Erin

From: Connell, Erin M.
Sent: Thursday, May 23, 2019 3:03 PM
To: 'Bremer, Laura - SOL' <Bremer.Laura@dol.gov>; Flores, Christine J. <cflores@orrick.com>
Cc: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Pilotin, Marc A - SOL <Pilotin.Marc.A@DOL.GOV>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Parker, Warrington <wparker@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Shwartz, Robert S. <rshwartz@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Shwartz, Robert S. <rshwartz@orrick.com>
Subject: RE: OFCCP v Oracle; OALJ Case No. 2017-OFC-00006

Laura,
Yes, we are interested in trying to reach an agreement. We were surprised yesterday when you said we were at an impasse. I am on another call right now, but if it ends early, Rob and I will call you before 4. If not, we'll call you then.
Thanks,
Erin

From: Bremer, Laura - SOL <Bremer.Laura@dol.gov>
Sent: Thursday, May 23, 2019 2:31 PM
To: Connell, Erin M. <econnell@orrick.com>; Flores, Christine J. <cflores@orrick.com>
Cc: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Pilotin, Marc A - SOL <Pilotin.Marc.A@DOL.GOV>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Parker, Warrington <wparker@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Shwartz, Robert S. <rshwartz@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Shwartz, Robert S. <rshwartz@orrick.com>
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Erin,
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Laura C. Bremer
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90 7th Street, Suite 3-700
San Francisco, California 94103
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From: Connell, Erin M. <econnell@orrick.com>
Sent: Thursday, May 23, 2019 2:15 PM

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Cc: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Pilotin, Marc A - SOL <Pilotin.Marc.A@DOL.GOV>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Parker, Warrington <wparker@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Shwartz, Robert S. <rshwartz@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Shwartz, Robert S. <rshwartz@orrick.com>
Subject: RE: OFCCP v Oracle; OALJ Case No. 2017-OFC-00006

Hi Laura,
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To: Flores, Christine J. <cflores@orrick.com>
Cc: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Pilotin, Marc A - SOL <Pilotin.Marc.A@DOL.GOV>; Connell, Erin M. <econnell@orrick.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Parker, Warrington <wparker@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Shwartz, Robert S. <rshwartz@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>
Subject: RE: OFCCP v Oracle; OALJ Case No. 2017-OFC-00006

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From: Flores, Christine J. <cflores@orrick.com>
Sent: Wednesday, May 22, 2019 5:59 PM
To: Bremer, Laura - SOL <Bremer.Laura@dol.gov>
Cc: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Pilotin, Marc A - SOL <Pilotin.Marc.A@DOL.GOV>; Connell, Erin M. <econnell@orrick.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Parker, Warrington <wparker@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Shwartz, Robert S. <rshwartz@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>
Subject: OFCCP v Oracle; OALJ Case No. 2017-OFC-00006

Please see attached correspondence from Erin Connell regarding the above-referenced matter.

Christine J. Flores
Executive Assistant
Secretary to Erin M. Connell

Orrick
San Francisco 
T (415) 773-5566
cflores@orrick.com



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**UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES**

**OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS, UNITED
STATES DEPARTMENT OF LABOR,**

Plaintiff,

v.

ORACLE AMERICA, INC.

Defendant.

Case No. 2017-OFC-00006

RECEIVED

MAY 24 2019

Office of Administrative Law Judges
San Francisco, CA

**DECLARATION OF JEREMIAH MILLER IN SUPPORT OF OFCCP'S MOTION FOR
PROTECTIVE ORDER AND ALTERNATIVE MOTION FOR LEAVE TO AMEND**

I, Jeremiah Miller, state and declare as follows:

1. I am Counsel for Civil Rights for the U.S. Department of Labor, Office of the Solicitor, and co-counsel for Plaintiff in this action. I submit this declaration in support of OFCCP's Motion for Protective Order and Alternative Motion for Leave to Amend the Complaint. I have personal knowledge of the matter set forth in this declaration, and I could and would competently testify thereto if called upon to do so.

2. Since the filing of this matter, OFCCP has been contacted by interested members of the public, including current and former Oracle employees about this case.

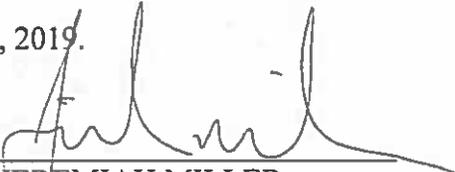
3. On March 14, 2019, I reached out to counsel for Oracle, in order to inform them that some of Oracle's current managers had been contacting OFCCP and the Office of the Solicitor about this case. I expressed OFCCP's position that OFCCP could interview these managers outside of the presence of counsel, but stated that, in "the interest of transparency,

efficiency and avoiding future disputes” we were seeking agreement from Oracle that we could communicate with their current managers in confidence. A true and correct copy of that email is attached to this declaration as Exhibit A.

4. After some discussion with counsel for Oracle, we reached an agreement that OFCCP could interview Oracle’s managers outside of the presence of Oracle’s counsel, subject to a few limitations.

5. In early April, 2019, I caused a letter (dated April 4, 2019) to be sent to those members of the protected classes for whom we had mailing addresses informing them of this case and providing contact information for OFCCP. A true and correct copy of the template for that letter is attached to this declaration as Exhibit B.

I declare under the penalty of perjury that the foregoing is true and correct and that this declaration was executed in Seattle, Washington on May 24, 2019.



JEREMIAH MILLER
Counsel for Civil Rights

Exhibit A

From: Miller, Jeremiah - SOL
To: Connell, Erin M.
Cc: Siniscalco, Gary R.; Parker, Warrington; Laura - SOL Bremer (Bremer.Laura@dol.gov); Garcia, Norman - SOL
Subject: OFCCP v. Oracle-- contact with current managers
Date: Thursday, March 14, 2019 10:14:00 AM

Hi Erin,

As this case progresses, we are being contacted by current managers at Oracle whom we believe to be class members covered by our action. We believe we should be able to interview them in confidence about matters related to the Second Amended Complaint, outside the presence of counsel for Oracle. In the interest of transparency, efficiency, and avoiding future disputes, we are seeking your agreement that we may communicate with Oracle's current managers in this case without counsel for Oracle's participation. Please let me know if you agree, or if you would like to discuss this issue further.

Thanks,
Jeremiah

Jeremiah Miller
Acting Counsel for Civil Rights
U.S. Department of Labor, Office of the Solicitor
300 Fifth Avenue, Suite 1120
Seattle, WA 98104
telephone: 206-757-6757
fax: 206-757-6761

This document may contain information that is privileged by the attorney-client privilege or work product doctrine or otherwise exempt from disclosure under applicable law. Do not disclose without consulting the Office of the Solicitor.

Exhibit B

U.S. Department of Labor

Office of the Solicitor
300 Fifth Ave., Suite 1120
Seattle, Washington 98104-2397
(206) 757-6762
FAX (206) 757-6761



Employee Name
House and Street
City State Zip

April __, 2019

Dear _____

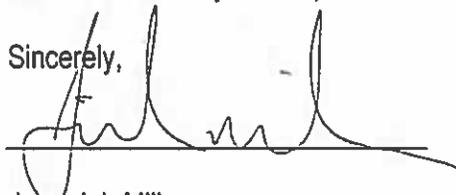
We are writing to you because you have been named as a potential injured employee in the *Department of Labor's lawsuit Office of Federal Contract Compliance Programs, United States Department of Labor v. Oracle America, Inc.*, OALJ Case No. 2017-OFC-00006. This case is scheduled to go to trial December 5, 2019, in San Francisco, California. This lawsuit alleges Oracle America, Inc. (Oracle) unlawfully discriminated against its employees by suppressing the pay of its female, Black, and Asian employees. Based on our analysis of Oracle's pay data, we have determined that these employees have been underpaid as much as 20% relative to their peers. We estimate that this discrimination cost these employees at least \$600,000,000 in lost wages from 2013 to the present. The Department of Labor is bringing this lawsuit to end this discrimination, and require Oracle to pay its injured employees for their lost wages.

We are looking to talk to employees who were employed by Oracle any time between 2013 and 2019, who were affected by this discrimination. We want to hear what happened to you. We are specifically looking to talk to **female employees** who worked in **Product Development, Information Technology, and Support lines of business**; **Black and Asian employees** employed in **Product Development**, particularly if Oracle used your prior salary to set your starting salary, placed you in lower paying positions than your peers or channeled you into lower paying positions throughout your career. We are also looking for **applicants or employees for Product Development jobs** recruited through Oracle's college recruiting program.

We want to assure you that you have not been accused of any wrongdoing; and we will keep your identity confidential, unless you volunteer to share your story as a witness in this case.

If you have information related to our lawsuit, would like to find out whether your wages have been impacted or have any questions about this process you may contact the Department of Labor's Oracle witness line at (213) 894-1591. If no one picks up, please leave your contact information, and we will return your call. You may also send us an email at OFCCPvOracleLitigation@dol.gov.

Thank you in advance for your cooperation in this matter.

Sincerely,


Jeremiah Miller
Counsel for Civil Rights
Office of the Solicitor
Department of Labor

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

RECEIVED

MAY 24 2019

Office of Administrative Law Judges
San Francisco, Ca

OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS, UNITED
STATES DEPARTMENT OF LABOR,

Plaintiff,

v.

ORACLE AMERICA, INC.

Defendant.

Case No. 2017-OFC-00006

RECEIVED

MAY 24 2019

Office of Administrative Law Judges
San Francisco, Ca

**DECLARATION OF NORMAN E. GARCIA IN SUPPORT OF OFCCP'S MOTION FOR
PROTECTIVE ORDER AND ALTERNATIVE MOTION FOR LEAVE TO AMEND**

I, Norman E. Garcia, state and declare as follows:

1. I am a Senior Trial Attorney for the U.S. Department of Labor, Office of the Solicitor, and one of the counsels of record for Plaintiff in this action. I submit this declaration in support of OFCCP's Motion for Protective Order and Alternative Motion for Leave to Amend the Complaint. I have personal knowledge of the matter set forth in this declaration, and I could and would competently testify thereto if called upon to do so.

2. I have interviewed Oracle informants during the course of this litigation. I received information that Oracle's defense counsel, Orrick, Herrington & Sutcliffe, LLP ("Orrick"), is communicating with members of the protected class, specifically emailing class members to set up interviews with Orrick, and copying Oracle's in-house counsel on such emails. Attached hereto as Exhibit A is a true and accurate copy of one such email.

3. The email disclosed that Orrick is counsel to Oracle in the *Jewett* state class action alleging Oracle engaged in compensation discrimination against women, but failed to disclose: (a) anything about *Jewett*, including that it claims compensation discrimination by Oracle against women employed by Oracle, (b) the pending enforcement action by OFCCP against Oracle, (c) that Oracle's interests in these lawsuits are adverse to the employees from whom Oracle sought interviews, or (d) that the interview was voluntary.

4. The informant from whom I received the email (Exhibit A) stated that she did not feel that the interview was voluntary and wished to remain confidential for fear of retaliation by Oracle.

5. OFCCP has been unable to provide information to all of the protected class members in this litigation due to Oracle's repeated refusal to provide contact information for all of the class members.

6. Oracle has consistently resisted providing OFCCP with class member contact information throughout the life of this case. Oracle refused to produce any contact information whatsoever for its employees during the compliance review and during the first nine months of this enforcement action, thereby blocking OFCCP's ability to contact the individuals in whose interest OFCCP seeks relief. Oracle only subsequently produced incomplete contact information after the Court ordered it to do so. Oracle has refused to supplement the contact information it produced by court order in 2017. Consequently, OFCCP lacks contact information for thousands of protected class members.

I declare under the penalty of perjury that the foregoing is true and correct and that this declaration was executed in San Francisco, California on May 23, 2019.


NORMAN E. GARCIA
Senior Trial Attorney

Exhibit A

Subject: Jewett v. Oracle

Date [REDACTED]

From: Smith, David R. <dsmith@orrick.com>

To [REDACTED]

CC: Emily Sullivan <emily.sullivan@oracle.com>

Dear [REDACTED]

I am an attorney with the law firm of Orrick, Herrington & Sutcliffe LLP, which represents Oracle in its defense of an ongoing lawsuit against the company (*Jewett v. Oracle*). In order to gather information relevant to the case, we would like to speak with a number of ICs, including you. You have not been singled out in any way, but we believe you may have relevant information to share.

We would like to schedule a time to speak with you over the next week – you do not need to do anything to prepare for the call. Will you please provide me with some times when you are available for an hour-long call? I can provide more background about the case on the call.

I have copied Emily Sullivan, Managing Counsel in Oracle's in-house legal department, in the event you have any questions about this outreach or the interview we'd like to conduct.

Thanks in advance for your time – we greatly appreciate it.

David Smith

David B. Smith

CONFIDENTIAL

CERTIFICATE OF SERVICE

I certify that on May 24, 2019, the foregoing PLAINTIFF'S MOTION FOR A PROTECTIVE ORDER OR IN THE ALTERNATIVE LEAVE TO AMEND THE COMPLAINT, MEMORANDUM OF POINTS AND AUTHORITIES, and the DELCLARATIONS OF JEREMIAH MILLER, LAURA BREMER, AND NORMAN GARCIA IN SUPPORT OF PLAINTIFF'S OPPOSITION were served upon the following individuals via email at the following addresses:

ERIN M. CONNELL: econnell@orrick.com
GARY R. SINISCALCO: grsiniscalco@orrick.com
JESSICA R.L. JAMES: jessica.james@orrick .com
JACQUELINE KADDAH: jkaddah@orrick.com
Orrick, Herrington & Sutcliffe LLP
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gsiniscalco@orrick.com

Attorneys for Defendant Oracle America, Inc.

/s/ David Edeli

U.S. Department of Labor